

MONTANA LEGISLATIVE HISTORY

Chapter 377 19 99

Bill H _____ S 117

Original bill & history ✓c

H. Committee on Business & Labor S. Committee on Labor + employ. Relat

Hearing Date(s) 3/09 ✓c

Hearing Date(s) 1/14 ✓c

3/15 _____c

EXEC. ACTION 2/3 Xc

_____c

_____c

_____c

_____c

Date Out _____c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

SENATE BILLS AND RESOLUTIONS

89

1/19	Committee Report--Bill Passed as Amended		
1/20	2nd Reading Passed	50	0
1/21	3rd Reading Passed	49	0
	Transmitted to House		
2/16	Referred to Human Services		
3/03	Hearing		
3/04	Committee Executive Action--Bill Concurred	18	0
3/04	Committee Report--Bill Concurred		
3/08	2nd Reading Concurred	99	0
3/09	3rd Reading Concurred	99	1
	Returned to Senate		
3/10	Sent to Enrolling		
3/10	Returned from Enrolling		
3/12	Signed by President		
3/13	Signed by Speaker		
3/15	Transmitted to Governor		
3/17	Signed by Governor		
3/19	Chapter Number Assigned		
	Chapter Number 98		
	Effective Date: 10/01/1999 - All Sections		

SB 117 Introduced by F. Thomas

LC0330 Drafter: McClure

Revise Certain Laws Within the Workers' Compensation Act That Are Administered by the Department of Labor and Industry;...

By Request of Department of Labor and Industry

10/15	Fiscal Note Needed		
12/23	Introduced		
1/04	1st Reading		
1/04	Referred to Labor and Employment Relations		
1/04	Fiscal Note Requested		
1/11	Fiscal Note Received		
1/11	Fiscal Note Signed		
1/11	Fiscal Note Printed		
1/14	Hearing		
1/18	Revised Fiscal Note Requested		
1/25	Revised Fiscal Note Received		
1/26	Revised Fiscal Note Printed		
2/03	Committee Executive Action--Bill Passed as Amended	9	0
2/03	Committee Report--Bill Passed as Amended		
2/06	2nd Reading Passed as Amended	48	0
2/08	3rd Reading Passed	45	3
	Transmitted to House		
2/16	Referred to Business and Labor		
3/08	Hearing		
3/15	Committee Executive Action--Bill Concurred	18	0
3/16	Committee Report--Bill Concurred		
3/30	2nd Reading Concurred as Amended	84	16
4/01	3rd Reading Concurred	87	12
	Returned to Senate with Amendments		
4/08	2nd Reading House Amendments Concurred	50	0
4/09	3rd Reading Passed as Amended by House	50	0

4/12 Sent to Enrolling
 4/13 Returned from Enrolling
 4/14 Signed by President
 4/15 Signed by Speaker
 4/15 Transmitted to Governor
 4/20 Signed by Governor
 4/22 Chapter Number Assigned
 Chapter Number 377
 Effective Date: 4/20/1999 - Sections 2, 3 and 23-27
 Effective Date: 7/01/1999 - Sections 1, 4-15 and 17-22
 Effective Date: 7/01/2000 - Section 16

SB 118 Introduced by F. Thomas

LC0794 Drafter: McClure

Authorize the Department of Labor and Industry to Increase to 3 Percent the Workers' Compensation Assessment Fee on Plan No. 1 Employers, Plan No. 2 Insurers, and the State Fund;...

By Request of Department of Labor and Industry

12/01	Fiscal Note Needed		
12/23	Introduced		
1/04	1st Reading		
1/04	Referred to Labor and Employment Relations		
1/12	Fiscal Note Requested		
1/14	Hearing		
1/25	Fiscal Note Received		
1/27	Fiscal Note Printed		
2/03	Committee Executive Action--Bill Passed as Amended	9	0
2/03	Committee Report--Bill Passed as Amended		
2/06	2nd Reading Passed	48	0
2/08	3rd Reading Passed	45	3
	Transmitted to House		
2/16	Referred to Business and Labor		
3/08	Hearing		
3/08	Tabled in Committee		
	Died in Standing Committee		

SB 119 Introduced by Devlin

LC0661 Drafter: Martin

Allow the State of Montana to Retain Additional Tax Revenue Resulting from Reclassification of Agricultural Land;...

12/23 Introduced
 1/04 1st Reading
 1/04 Referred to Taxation
 1/07 Fiscal Note Requested
 1/14 Fiscal Note Received
 1/14 Fiscal Note Signed
 1/21 Fiscal Note Printed
 3/31 Missed Deadline for Revenue Bill Transmittal

SB 120 Introduced by Bartlett

LC0227 Drafter: Niss

Relate to the Flexible Spending Account Program;...

SENATE BILL NO. 117

INTRODUCED BY THOMAS F

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN LAWS WITHIN THE WORKERS' COMPENSATION ACT THAT ARE ADMINISTERED BY THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING A CHANGE IN THE WORKERS' COMPENSATION PERCENTAGE TO LIMIT THE ASSESSMENT TO AMOUNTS APPROPRIATED BY THE LEGISLATURE; PROVIDING THE DEPARTMENT OF LABOR AND INDUSTRY WITH RULEMAKING AUTHORITY FOR DATA COLLECTION FOR THE WORKERS' COMPENSATION DATABASE SYSTEM; PROVIDING FOR ELECTRONIC SUBMITTAL OF REPORTS BY INSURERS; ESTABLISHING THE UNINSURED EMPLOYERS' FUND AS A STATE SPECIAL REVENUE ACCOUNT; ESTABLISHING THAT A PURPOSE OF THE UNINSURED EMPLOYERS' FUND IS PAYMENT OF ADMINISTRATIVE EXPENSES; PROVIDING FOR CONFIDENTIALITY OF UNINSURED EMPLOYERS' FUND RECORDS IN THE WORKERS' COMPENSATION ACT; CLARIFYING THE QUALIFICATIONS FOR AN EXAMINATION PANEL MEMBER; PROVIDING FOR PAYMENT OF BENEFITS IN A DISPUTED CLAIM PRIOR TO MEDIATION; SPECIFYING TERMINATION OF BENEFITS AFTER MEDIATION; AUTHORIZING REIMBURSEMENT FOR BENEFITS PAID AFTER A HEARING BEFORE THE WORKERS' COMPENSATION COURT; INCREASING THE AMOUNT PAYABLE FOR BURIAL EXPENSES FROM \$1,400 TO \$4,000; AUTHORIZING THE CERTIFICATION OF A DISABILITY ON THE DATE THE APPLICATION IS APPROVED; CHANGING THE PERIOD USED FOR ASSESSMENTS FOR THE INDUSTRIAL ACCIDENT REHABILITATION ACCOUNT FROM FISCAL YEAR TO CALENDAR YEAR; AUTHORIZING THE DETERMINATION OF ADVISABILITY OF CONTINUED EMPLOYMENT FOR OCCUPATIONAL DISEASE CLAIMANTS BY PERSONS OTHER THAN THE MEDICAL PANEL; REQUIRING THAT THE COSTS OF EXAMINATIONS AND REPORTS BE BORNE BY THE REQUESTING PARTY; PROVIDING THAT AN INSURER MAY REDUCE OR SUSPEND COMPENSATION FOR A CLAIMANT ENGAGING IN AN UNSANITARY OR INJURIOUS PRACTICE THAT IMPERILS RECOVERY AND REQUIRING MEDIATION OF DISPUTES WHEN BENEFITS ARE TERMINATED DUE TO UNSANITARY OR INJURIOUS PRACTICES; ELIMINATING REDUNDANT LANGUAGE BY COMBINING STATUTES RELATING TO THE CREATION AND ADMINISTRATION OF THE UNINSURED EMPLOYERS' FUND; AMENDING SECTIONS 39-9-401, 39-71-123, 39-71-201, 39-71-225, 39-71-432, 39-71-501, 39-71-503, 39-71-510, 39-71-517, 39-71-519, 39-71-605, 39-71-610, 39-71-725,

1 39-71-905, 39-71-1004, 39-72-405, 39-72-608, AND 39-72-714, MCA; REPEALING SECTION
2 39-71-502, MCA; PROVIDING FOR COORDINATION WITH ARTICLE VIII, SECTION 17, OF THE MONTANA
3 CONSTITUTION; AND PROVIDING EFFECTIVE DATES, A RETROACTIVE APPLICABILITY DATE, AND A
4 TERMINATION DATE."

5
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

7
8 Section 1. Section 39-9-401, MCA, is amended to read:

9 "39-9-401. Violation -- infraction -- penalty -- disposition. (1) It is a violation of this chapter and
10 an infraction for any construction contractor to:

11 (a) perform work as a construction contractor without being registered as required by this
12 chapter;

13 (b) perform work as a construction contractor when the construction contractor's registration is
14 suspended; or

15 (c) transfer a valid registration to an unregistered construction contractor or allow an unregistered
16 construction contractor to work under a registration issued to another construction contractor.

17 (2) (a) A determination by the department of a violation of this section subjects the person who
18 commits the violation to a penalty of up to \$500, as determined by the department. A person who has
19 been determined to have violated this section may request that a hearing be held in accordance with the
20 Montana Administrative Procedure Act. The hearing may be held by telephone or video conference. An
21 appeal of the hearing decision must be made in the same manner as prescribed in 39-51-2403 and
22 39-51-2404.

23 (b) A penalty under this section does not apply to a violation that is determined to be an
24 inadvertent error.

25 (c) A penalty collected under this section must be deposited in the uninsured employers' fund
26 established in ~~39-71-502~~ 39-71-503."

27
28 Section 2. Section 39-71-123, MCA, is amended to read:

29 "39-71-123. Wages defined. (1) "Wages" means all remuneration paid for services performed by
30 an employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value

1 of all remuneration paid in any medium other than cash. The term includes but is not limited to:

2 (a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work,
3 holidays, vacations, and sickness periods;

4 (b) backpay or any similar pay made for or in regards to previous service by the employee for the
5 employer, other than retirement or pension benefits from a qualified plan;

6 (c) tips or other gratuities received by the employee, to the extent that tips or gratuities are
7 documented by the employee to the employer for tax purposes;

8 (d) income or payment in the form of a draw, wage, net profit, or substitute for money received
9 or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed
10 work or provided services for that remuneration;

11 (e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is
12 based on its actual value; and

13 (f) payments made to an employee on any basis other than time worked, including but not limited
14 to piecework, an incentive plan, or profit-sharing arrangement.

15 (2) The term "wages" does not include any of the following:

16 (a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and
17 other expenses, as set forth in department rules;

18 (b) the amount of the payment made by the employer for employees, if the payment was made
19 for:

20 (i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal
21 Revenue Code;

22 (ii) sickness or accident disability under a workers' compensation policy;

23 (iii) medical or hospitalization expenses in connection with sickness or accident disability, including
24 health insurance for the employee or the employee's immediate family; or

25 (iv) death, including life insurance for the employee or the employee's immediate family;

26 (c) vacation or sick leave benefits accrued but not paid; or

27 (d) special rewards for individual invention or discovery.

28 (3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average
29 actual earnings for the four pay periods immediately preceding the injury are the employee's wages,
30 except that if the term of employment for the same employer is less than four pay periods, the

1 employee's wages are the hourly rate times the number of hours in a week for which the employee was
2 hired to work.

3 (b) For good cause shown, if the use of the last four pay periods does not accurately reflect the
4 claimant's employment history with the employer, the wage may be calculated by dividing the total
5 earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number
6 of weeks in that period, including periods of idleness or seasonal fluctuations.

7 (4) (a) For the purpose of calculating compensation benefits for an employee working concurrent
8 employments, the average actual wages must be calculated as provided in subsection (3). As used in this
9 subsection, "concurrent employment" means employment in which the employee was actually employed
10 at the time of the injury and would have continued to be employed without a break in the term of
11 employment if not for the injury.

12 (b) The compensation benefits for a covered volunteer must be based on the average actual
13 wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who
14 elected not to be covered, from which the volunteer is disabled by the injury incurred.

15 (c) The compensation benefits for an employee working at two or more concurrent remunerated
16 employments must be based on the aggregate of average actual wages of all employments, except
17 ~~self-employment as a sole proprietor or partner~~ for the wages earned by individuals while engaged in the
18 employments outlined in 39-71-401(3)(a) who elected not to be covered, from which the employee is
19 disabled by the injury incurred."
20

21 **Section 3.** Section 39-71-201, MCA, is amended to read:

22 **"39-71-201. (Temporary) Administration fund.** (1) A workers' compensation administration fund
23 is established out of which all costs of administering the Workers' Compensation and Occupational
24 Disease Acts and the statutory occupational safety acts the department ~~must administer~~ administers, with
25 the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers'
26 fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state
27 treasury to the credit of the workers' compensation administrative fund:

28 (a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308,
29 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

30 (b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No.

3, the state fund. The assessments must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, an assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than \$500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to assessment. The assessments must be sufficient to fund the ~~direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures.~~ Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable portion of the indirect costs of regulating plan No. 3 costs of the department's administration of the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts administered by the department. The assessment must be equitably apportioned between the three plans using proper accounting and cost allocation procedures. Other sources of revenue, including unexpended funds from the preceding fiscal year, must be used to reduce the costs before levying the assessments.

(2) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(3) Disbursements from the administration money must be made after being approved by the department upon a claim. (Terminates June 30, 1999--sec. 8, Ch. 385, L. 1997.)

39-71-201. (Effective July 1, 1999) Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts the department must administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administrative fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be 2.6% of the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational Disease Act without regard to the application of any deductible whether the employer or the insurer pays the losses:

(i) total compensation benefits paid; and

(ii) except for medical benefits in excess of \$200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 31 in the form and containing the information required by the department a report of paid losses pursuant to subsection (1)(b).

(3) An assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than \$500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to an initial assessment equal to the minimum assessment against plan No. 1 employers and plan No. 2 insurers.

(4) Payment of the assessment required by this section must be submitted by the employer under plan No. 1, plan No. 2, or plan No. 3 in:

(a) one installment made on or before July 1; or

(b) two equal installments made on or before July 1 and December 31 of each year. If an employer or insurer fails to pay the assessment required under this section, the department may impose a fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%.

(5) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(6) Disbursements from the administration money must be made after being approved by the department upon claim for disbursement."

1 Section 4. Section 39-71-201, MCA, is amended to read:

2 **"39-71-201. (Temporary) Administration fund.** (1) A workers' compensation administration fund
3 is established out of which all costs of administering the Workers' Compensation and Occupational
4 Disease Acts and the statutory occupational safety acts the department must administer, with the
5 exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund,
6 are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury
7 to the credit of the workers' compensation administrative fund:

8 (a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308,
9 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

10 (b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No.
11 3, the state fund. The assessments must be levied against the preceding calendar year's gross annual
12 payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the
13 policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding
14 calendar year. However, an assessment of the plan No. 1 employer or plan No. 2 insurer may not be less
15 than \$500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure
16 or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or
17 plan No. 2 insurer is subject to assessment. The assessments must be sufficient to fund the direct costs
18 identified to the three plans and an equitable portion of the indirect costs based on the ratio of the
19 preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation
20 procedures. Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable
21 portion of the indirect costs of regulating plan No. 3. Other sources of revenue, including unexpended
22 funds from the preceding fiscal year, must be used to reduce the costs before levying the assessments.

23 (2) The administration fund must be debited with expenses incurred by the department in the
24 general administration of the provisions of this chapter, including the salaries of its members, officers,
25 and employees and the travel expenses of the members, officers, and employees, as provided for in
26 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within
27 or without the state.

28 (3) Disbursements from the administration money must be made after being approved by the
29 department upon a claim. (Terminates June 30, 1999--sec. 8, Ch. 385, L. 1997.)

30 **39-71-201. (Effective July 1, 1999) Administration fund.** (1) A workers' compensation

administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts the department ~~must administer~~ administers, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administrative fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be ~~2.6%~~ 3.5% of the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational Disease Act without regard to the application of any deductible whether the employer or the insurer pays the losses:

(i) total compensation benefits paid; and

(ii) except for medical benefits in excess of \$200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 31 in the form and containing the information required by the department a report of paid losses pursuant to subsection (1)(b).

(3) An assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than \$500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to an initial assessment equal to the minimum assessment against plan No. 1 employers and plan No. 2 insurers.

(4) Payment of the assessment required by this section must be submitted by the employer under plan No. 1, plan No. 2, or plan No. 3 in:

(a) one installment made on or before July 1; or

(b) two equal installments made on or before July 1 and December 31 of each year. If an employer or insurer fails to pay the assessment required under this section, the department may impose a fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%.

(5) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(6) Disbursements from the administration money must be made after being approved by the department upon claim for disbursement."

Section 5. Section 39-71-225, MCA, is amended to read:

"39-71-225. Workers' compensation database system. (1) The department shall develop a workers' compensation database system to generate management information about Montana's workers' compensation system. The database system must be used to collect and compile information from insurers, employers, medical providers, claimants, adjusters, rehabilitation providers, and the legal profession.

(2) Data collected must be used to provide:

(a) management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

(i) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;

(ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends;

(iii) information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement;

(b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to be at risk in an investigation or fraud proceeding, to determine claims liability or for fraud investigation. The department may release information only upon written request by the insurer and may disclose only the claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and name and address of the insurer and claim adjuster on each claim filed. Information obtained by an insurer pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent necessary for determining claim liability or for fraud investigation; and

1 (c) current and prior claim information to law enforcement agencies for purposes of fraud
2 investigation or prosecution.

3 (3) The department is authorized to collect from insurers, employers, medical providers, the legal
4 profession, and others the information necessary to generate the workers' compensation database
5 system.

6 (4) The workers' compensation database system must be designed in accordance with the
7 following principles:

8 (a) avoidance of duplication and inconsistency;

9 (b) reasonable availability of data elements;

10 (c) value of information collected to be commensurate with the cost of retrieving the collected
11 information;

12 (d) uniformity to permit efficiency of collection and to allow interstate comparisons;

13 (e) a workable mechanism to ensure the accuracy of the data collected and to protect the
14 confidentiality of collected data;

15 (f) reasonable availability of the data at a fair cost to the user;

16 (g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

17 (h) compatibility with electronic data reporting;

18 (i) reporting procedures that can be handled through private data collection systems that adhere
19 to the provisions of subsections (4)(a) through (4)(h);

20 (j) implementation of reporting requirements that allow reasonable lead time for compliance.

21 (5) The department shall publish an annual report on the information compiled.

22 (6) Users of information obtained from the workers' compensation database under this section
23 are liable for damages arising from misuse or unlawful dissemination of database information.

24 (7) Beginning July 1, 2000, an insurer who submits 50 or more "first reports of injury" to the
25 department in 1 calendar year shall electronically submit the reports and any other reports related to the
26 reported claims in a nationally recognized format specified by the department.

27 (8) The department may adopt rules to implement this section."

28
29 **Section 6. Section 39-71-432, MCA, is amended to read:**

30 **"39-71-432. Definitions. As used in 39-71-433, the following definitions apply:**

(1) "Business entity" means a business enterprise owned by a single person, corporation, organization, business trust, trust, partnership, limited liability company, limited liability partnership, joint venture, association, or other business entity.

(2) "Group" means two or more business entities that join together, ~~with the approval of the department,~~ to purchase individual workers' compensation insurance policies covering each business entity that is part of a group."

Section 7. Section 39-71-501, MCA, is amended to read:

"39-71-501. Definition of uninsured employer. For the purposes of 39-71-501 ~~through~~, 39-71-503 through 39-71-511, and 39-71-515 through 39-71-520, "uninsured employer" means an employer who has not properly complied with the provisions of 39-71-401."

Section 8. Section 39-71-503, MCA, is amended to read:

"39-71-503. ~~Administration~~ Uninsured employers' fund -- purpose and administration of fund -- appropriation. (1) ~~The department shall administer the fund and shall pay from it all expenses of administering the fund, all loss adjustment expenses for claims of injured employees of uninsured employers, and all proper benefits to injured employees of underinsured and uninsured employers~~ There is created an uninsured employers' fund in the state special revenue account to pay:

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in subsection (3);

(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015; and

(c) the expenses incurred by the department in administering the uninsured employers' fund.

(2) The department may refer to the workers' compensation fraud office, established in 2-15-2015, cases involving:

(a) false or fraudulent claims for benefits; and

(b) criminal violations of 45-7-501.

~~(2)(3)~~ (3) Surpluses and reserves may not be kept for the fund. The department shall make payments that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes precedence over the payment of medical benefits. Lump-sum payments of future

1 projected benefits, including impairment awards, may not be made from the fund. The board of
2 investments shall invest the money of the fund, and the investment income must be deposited in the
3 fund.

4 ~~(3)~~(4) The amounts necessary for the payment of benefits from this fund are statutorily
5 appropriated, as provided in 17-7-502, from this fund."

6
7 **Section 9.** Section 39-71-510, MCA, is amended to read:

8 "39-71-510. Limitation on benefit entitlement under fund. Notwithstanding the provisions of
9 39-71-407, ~~39-71-502~~, and 39-71-503, injured employees or an employee's beneficiaries who pursue
10 a claim for benefits from the uninsured employers' fund are not granted an entitlement by this state for
11 full workers' compensation benefits from the fund. Benefits from the fund must be paid in accordance
12 with the sums in the fund. If the department determines at any time that the sums in the fund are not
13 adequate to fully pay all claims, the department may make appropriate proportionate reductions in
14 benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the
15 future."

16
17 **Section 10.** Section 39-71-517, MCA, is amended to read:

18 "39-71-517. Requirement to serve papers. In pursuing remedies under 39-71-501 ~~through~~,
19 39-71-503 through 39-71-511, and 39-71-515 through 39-71-520, an injured employee or the employee's
20 beneficiaries shall serve all pleadings and all other litigation papers on the department and the uninsured
21 employer, regardless of whether the department or the uninsured employer is a party to the particular
22 action to which the papers relate."

23
24 **Section 11.** Section 39-71-519, MCA, is amended to read:

25 "39-71-519. Settlement. The department, the uninsured employer, the injured employee or the
26 employee's beneficiaries, a third party who shares liability as defined in 39-71-412, or a fellow employee
27 who shares liability as defined in 39-71-413 may enter into a settlement agreement to finally settle the
28 rights and liabilities under 39-71-501 ~~through~~, 39-71-503 through 39-71-511, and 39-71-515 through
29 39-71-520 of any or all of the parties. The settlement is subject to department approval in accordance
30 with 39-71-741."

Section 12. Section 39-71-605, MCA, is amended to read:

"39-71-605. Examination of employee by physician -- effect of refusal to submit to examination -- report and testimony of physician -- cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician, psychologist, or panel that must be provided and paid for by the insurer and shall likewise submit to examination from time to time by any physician, psychologist, or panel selected by the department or as ordered by the workers' compensation judge.

(b) The request or order for an examination must fix a time and place for the examination, with regard for the employee's convenience, physical condition, and ability to attend at the time and place that is as close to the employee's residence as is practical. An examination that is conducted by a physician, psychologist, or panel licensed in another state is not precluded under this section. The employee is entitled to have a physician present at any examination. If the employee, after written request, fails or refuses to submit to the examination or in any way obstructs the examination, the employee's right to compensation must be suspended and is subject to the provisions of 39-71-607. Any physician, psychologist, or panel employed by the insurer or the department who makes or is present at any examination may be required to testify as to the results of the examination.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department or the workers' compensation judge, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers desirable by a physician, psychologist, or panel within the state or elsewhere that has had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician, psychologist, or panel making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician, psychologist, or panel for the examination.

(3) As used in this section, a panel includes a practitioner whose licensure would qualify the practitioner to act as a treating physician, as defined in 39-71-116, and may include a psychologist.

(4) A claimant is required, upon a written request of an insurer, to submit to a functional

capacities evaluation conducted by a licensed physical therapist.

(5) This section does not apply to impairment evaluations provided for in 39-71-711."

Section 13. Section 39-71-610, MCA, is amended to read:

"39-71-610. Termination of benefits by insurer -- department order to pay disputed benefits prior to hearing or mediation -- limitation on order -- right of reimbursement. If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the department may, upon written request, order an insurer to pay additional biweekly compensation benefits prior to a hearing or mediation, but in no event may the biweekly compensation benefits be ordered to be paid under this section for a period exceeding 49 days or for any period subsequent to the date of ~~a~~ the hearing or mediation. If after a hearing before the workers' compensation court it is held that the insurer was not liable for the compensation payments ordered by the department, the insurer has the right to be reimbursed for ~~such~~ the payments by the claimant."

Section 14. Section 39-71-725, MCA, is amended to read:

"39-71-725. Payment of burial expense. There ~~shall~~ must be paid, in case of the death of an employee, ~~which~~ whose death is the result of an accidental injury arising out of the employment and happening in the course of the employment, the reasonable burial expenses of the employee, not exceeding ~~\$1,400, and such~~ \$4,000. The payment is not a part of the compensation ~~which~~ that might be paid but is a benefit in addition to and separate ~~and apart~~ from compensation."

Section 15. Section 39-71-905, MCA, is amended to read:

"39-71-905. Certification as person with a disability. A person who wishes to be certified as a person with a disability for purposes of this part shall apply to the department on forms furnished by the department. The department shall conduct an investigation and shall issue a certificate to a person who, in the department's discretion, meets the requirements for certification. A person shall apply for certification before employment or ~~within 60 days~~ after the person becomes employed or reemployed and before an injury occurs that is covered by this part. The certification is effective on the date of ~~employment or reemployment~~ the application is approved. ~~Failure to apply before employment or within 60 days after employment or reemployment precludes the employer from the protection and benefits of~~

1 ~~this part.~~"

2
3 Section 16. Section 39-71-1004, MCA, is amended to read:

4 "39-71-1004. Industrial accident rehabilitation account. (1) The payments provided in 39-71-1003
5 must be made from the industrial accident rehabilitation account in the state special revenue fund.
6 Payments to the account must be made each year upon an assessment by the department as follows:

7 (a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation
8 Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to the
9 employer's injured employees in Montana for the preceding ~~fiscal~~ calendar year;

10 (b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers'
11 Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation
12 paid to injured employees of its insured in Montana during the preceding ~~fiscal~~ calendar year;

13 (c) by the state fund, an amount to be assessed by the department, not exceeding 1% of the
14 compensation paid by the state fund to injured employees in Montana during the preceding ~~fiscal~~ calendar
15 year.

16 (2) Separate accounts of the amounts that were collected and disbursements that were made
17 from the industrial accident rehabilitation account in the state special revenue fund must be kept for each
18 of the plans. If in any fiscal year the amount that was collected from the employers under any plan
19 exceeds the amount of payments for employees of the employers under the plan, the assessment against
20 the employers under the plan for the following year must be reduced.

21 (3) The payments provided for in this section must be made to the department, which shall credit
22 the sums paid to the industrial accident rehabilitation account in the custody of the state treasurer.
23 Disbursements from the account must be made after approval by the department.

24 (4) The funds allocated or contributed as provided in this section may not be used for payment
25 of administrative expenses of the department.

26 (5) The methods and processes used to disburse rehabilitation expense payments to eligible
27 disabled workers are procedural and do not affect the substantive rights of those disabled workers."
28

29 Section 17. Section 39-72-405, MCA, is amended to read:

30 "39-72-405. General limitations on payment of compensation. ~~(1) Compensation may not be paid~~

1 ~~when the last day of the injurious exposure of the employee to the hazard of the occupational disease has~~
2 ~~occurred prior to July 1, 1959.~~

3 ~~———(2) When an employee in employment on or after January 1, 1959, because the employee has~~
4 ~~an occupational disease incurred in and caused by the employment that is not yet disabling; and is~~
5 ~~discharged or transferred from the employment in which the employee is engaged or when the employee~~
6 ~~ceases employment and it is in fact, as determined by the medical panel, inadvisable for the employee~~
7 ~~on account of a nondisabling occupational disease to continue in employment and the employee suffers~~
8 ~~wage loss by reason of the discharge, transfer, or cessation, compensation may be paid, not exceeding~~
9 ~~\$10,000, by an agreement between the insurer and the claimant. If the parties fail to reach an agreement,~~
10 ~~the mediation procedures in Title 39, chapter 71, part 24, must be followed."~~
11

12 **Section 18. Section 39-72-608, MCA, is amended to read:**

13 **"39-72-608. Payment of medical examination, report, and autopsy expenses.** The expense of the
14 first medical examination and report as provided in 39-72-602 must be borne by the insurer. The expense
15 of a reexamination and panel report must be borne by the dissatisfied party requesting the reexamination.
16 The expense of the periodic medical examinations and reports, as provided in 39-72-607, must be borne
17 by the party requesting the periodic medical examination. The expense of the autopsy, as provided for
18 in 39-72-606, must be borne by the party requesting the autopsy. ~~When the occupational disease causes~~
19 ~~death, the~~ The expense of any examinations and reports, as provided in 39-72-605, must be borne by the
20 party requesting the examination."
21

22 **Section 19. Section 39-72-714, MCA, is amended to read:**

23 **"39-72-714. Reduction or suspension of compensation for unsanitary or injurious practices or**
24 **refusal to submit to medical or surgical treatment.** The ~~department~~ insurer may reduce or suspend the
25 compensation of ~~an employee~~ a claimant who persists in unsanitary or injurious practices tending to
26 imperil or retard his recovery or who refuses to submit to ~~such~~ medical or surgical treatment as is
27 reasonably essential to promote his the claimant's recovery. If a dispute arises between a claimant and
28 an insurer regarding the reduction or suspension of compensation, the mediation procedures provided in
29 Title 39, chapter 71, part 24, must be followed."
30

1 **NEW SECTION. Section 20. Confidentiality of records -- exception for use by public employees.**

2 Information obtained from any individual under this part is confidential and may not be disclosed or opened
3 to public inspection except to public employees when necessary to allow them to perform their public
4 duties or pursuant to a subpoena issued upon a showing of compelling state interest.

5
6 **NEW SECTION. Section 21. Repealer.** Section 39-71-502, MCA, is repealed.

7
8 **NEW SECTION. Section 22. Codification instruction.** [Section 20] is intended to be codified as
9 an integral part of Title 39, chapter 71, part 5, and the provisions of Title 39, chapter 71, part 5, apply
10 to [section 20].

11
12 **NEW SECTION. Section 23. Coordination instructions.** (1) If [LC 794] is submitted to and is not
13 approved by the electorate, then [section 4 of this act] is void.

14 (2) If Constitutional Initiative No. 75, enacting Article VIII, section 17, of the Montana
15 constitution, is declared invalid, then [section 4], amending 39-71-201, shall read as follows:

16 "Section 4. Section 39-71-201, MCA, is amended to read:

17 "**39-71-201. (Temporary) Administration fund.** (1) A workers' compensation administration fund
18 is established out of which all costs of administering the Workers' Compensation and Occupational
19 Disease Acts and the statutory occupational safety acts the department must administer, with the
20 exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund,
21 are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury
22 to the credit of the workers' compensation administrative fund:

23 (a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308,
24 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

25 (b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No.
26 3, the state fund. The assessments must be levied against the preceding calendar year's gross annual
27 payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the
28 policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding
29 calendar year. However, an assessment of the plan No. 1 employer or plan No. 2 insurer may not be less
30 than \$500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure

1 or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or
2 plan No. 2 insurer is subject to assessment. The assessments must be sufficient to fund the direct costs
3 identified to the three plans and an equitable portion of the indirect costs based on the ratio of the
4 preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation
5 procedures. Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable
6 portion of the indirect costs of regulating plan No. 3. Other sources of revenue, including unexpended
7 funds from the preceding fiscal year, must be used to reduce the costs before levying the assessments.

8 (2) The administration fund must be debited with expenses incurred by the department in the
9 general administration of the provisions of this chapter, including the salaries of its members, officers,
10 and employees and the travel expenses of the members, officers, and employees, as provided for in
11 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within
12 or without the state.

13 (3) Disbursements from the administration money must be made after being approved by the
14 department upon a claim. (Terminates June 30, 1999--sec. 8, Ch. 385, L. 1997.)

15 **39-71-201. (Effective July 1, 1999) Administration fund.** (1) A workers' compensation
16 administration fund is established out of which all costs of administering the Workers' Compensation and
17 Occupational Disease Acts and the statutory occupational safety acts the department ~~must administer~~
18 administers, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the
19 uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and
20 deposit in the state treasury to the credit of the workers' compensation administrative fund:

21 (a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308,
22 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

23 (b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No.
24 3, the state fund. The assessments must be ~~2.6% of~~ levied against the following benefits paid during the
25 preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational
26 Disease Act without regard to the application of any deductible whether the employer or the insurer pays
27 the losses:

28 (i) total compensation benefits paid; and

29 (ii) except for medical benefits in excess of \$200,000 per occurrence that are exempt from
30 assessment, total medical benefits paid for medical treatment rendered to an injured worker, including

1 hospital treatment and prescription drugs.

2 (c) After subtracting the unencumbered workers' compensation administration fund balance that
3 was carried forward from the previous year, the assessment percentage applied against the benefits paid
4 must be set at a level that generates an amount equal to the amount appropriated by the legislature for
5 the fiscal year.

6 (2) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan
7 No. 3, the state fund, shall file annually on March 31 in the form and containing the information required
8 by the department a report of paid losses pursuant to subsection (1)(b).

9 (3) An assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than \$500.
10 If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan
11 No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No.
12 2 insurer is subject to an initial assessment equal to the minimum assessment against plan No. 1
13 employers and plan No. 2 insurers.

14 (4) Payment of the assessment required by this section must be submitted by the employer under
15 plan No. 1, plan No. 2, or plan No. 3 in:

16 (a) one installment made on or before July 1; or

17 (b) two equal installments made on or before July 1 and December 31 of each year. If an
18 employer or insurer fails to pay the assessment required under this section, the department may impose
19 a fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%.

20 (5) The administration fund must be debited with expenses incurred by the department in the
21 general administration of the provisions of this chapter, including the salaries of its members, officers,
22 and employees and the travel expenses of the members, officers, and employees, as provided for in
23 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within
24 or without the state.

25 (6) Disbursements from the administration money must be made after being approved by the
26 department upon claim for disbursement.""

27
28 NEW SECTION. Section 24. Severability. If a part of [this act] is invalid, all valid parts that are
29 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
30 applications, the part remains in effect in all valid applications that are severable from that invalid

1 applications.

2
3 NEW SECTION. Section 25. Effective dates. (1) [Sections 2, 3, 22 through 24, 26, 27, and this
4 section] are effective on passage and approval.

5 (2) [Sections 1 and 4 through 21] are effective July 1, 1999.

6
7 NEW SECTION. Section 26. Retroactive applicability. [Section 3] applies retroactively, within the
8 meaning of 1-2-109, to occurrences after June 30, 1991.

9
10 NEW SECTION. Section 27. Termination. [Section 3] terminates June 30, 1999.

11 - END -

FISCAL NOTE

Bill #: SB0117

Title: Revise certain laws within the
Workers' Compensation Act

Primary

Sponsor: Fred Thomas

Status: As introduced

Fred Thomas 1/11/99
Sponsor Signature Date

Dave Lewis 1-9-99
Dave Lewis, Budget Director Date

Fiscal Summary

	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
Expenditures:		
State Special Revenue	\$1,185,817	\$1,059,267
Revenue:		
State Special Revenue	\$1,185,817	\$1,059,267
Net Impact on General Fund Balance:	\$0	\$0

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget	X		Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

- Revenue projections are based on projections of benefits paid of \$123,959,399 in calendar year (CY) 1998, which is the base for FY 2000 and \$119,334,937 in CY 1999, which is the base for FY 2001. The CY 1998 projection is based on three quarters of actual reported benefit paid information by insurers. CY 1999 benefit projections are the downward trend in total benefit payments that will continue.

Benefit payments

CY96 \$141,298,688	CY98 \$123,959,399
CY97 \$134,089,297	CY99 \$119,334,937

SB 117

2. CI-75 has no impact on the 2.6% rate as approved by the 1997 Legislature which will take effect July 1, 1999, but it will likely have an impact on raising the rate to 3.5%. If CI-75 is applicable, a companion bill sending this issue to the electorate should be prepared for the planned June 1999 vote..
3. The total amount has been applied to personal services object of expenditure because cuts initially applied to present a balanced budget were taken as vacancy savings in the Executive Budget, which should be restored if this bill is approved.
4. Failure to remove the 2.6% cap and approve this funding will mean the loss of approximately 25% of the department budget request for the Workers' Compensation Regulation Program. The result would be the inability to perform statutorily-mandated functions.

FISCAL IMPACT:

	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
FTE		
<u>Expenditures:</u>		
Personal Services	\$1,185,817	\$1,059,267
<u>Funding:</u>		
State Special Revenue (02)	\$1,185,817	\$1,059,267
<u>Revenues:</u>		
State Special Revenue (02)	\$1,185,817	\$1,059,267
<u>Net Impact to Fund Balance (Revenue minus Expenditure):</u>		
State Special Revenue (02)	\$0	\$0

LONG-RANGE IMPACTS:

Changes to Section 15 affecting the certification of individuals under the subsequent injury fund are expected to result in an additional 18 applications for certification each fiscal year and an additional 12 individuals becoming certified. Liability on a claim is not assumed by the subsequent injury fund until a minimum of two years has elapsed from date of injury. Therefore, impact on the fund will not begin to occur until the 2003 biennium. At that time, one additional claim per fiscal year is anticipated, resulting in an additional \$5,000 to \$10,000 in additional benefit payments per fiscal year.

TECHNICAL NOTES:

It appears likely a CI-75 companion bill will be required for Section 4(3)(b).

FISCAL NOTE

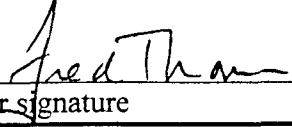
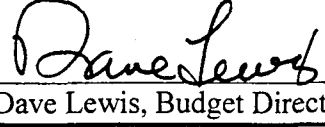
Bill #: SB0117

Title: Revise certain laws within the Workers' Compensation Act

Primary

Sponsor: Fred Thomas

Status: As introduced/amended in Senate Labor & Employment

 _____ Sponsor signature	1/26/99 _____ Date	 _____ Dave Lewis, Budget Director	1-25-99 _____ Date
---	--------------------------	--	--------------------------

Fiscal Summary

	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
Expenditures:		
State Special Revenue	\$998,000	\$1,059,000
Revenue:		
State Special Revenue	\$998,000	\$1,072,000
Net Impact on General Fund Balance:	\$0	\$0

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. The increase in estimated revenue is based upon a .4% (from 2.6% to 3.0%) increase in the assessment rate.
2. The revenue estimates provided in this fiscal note approximate those shown in the "introduced" fiscal note even though the assessment rate decreased 15% (from 3.5% to 3.0%) by amendment. The reason revenue remained approximately the same is: 1) Calendar year (CY) 1998 actual benefits paid is now known, whereas three quarters were known in the previous note, and 2) the fourth quarter of CY1998 showed an

SB 117 #2

Fiscal Note Request, SB0117, as introduced & amended in Senate Committee

Page 2

(continued)

- increase, and a decrease was projected, and 3) private insurers and the National Council of Compensation Insurers computed their estimates, which agree more with the new than the old.
3. Revenue projections are based on estimated benefits paid in a range of \$128.5 - \$132.9 million in CY 1998, which is the base for FY 2000, and \$130.0 - \$135.3 million in CY 1999, which is the base for FY 2001.
 4. The new revenue has been applied to personal services object of expenditure because cuts, initially applied to present a balanced budget, were taken as vacancy savings in the Executive Budget.
 5. SB118 is a companion bill to SB117. It sends the issue of the increase to the electorate, according to CI-75. This fiscal note assumes that the electorate will pass the issue. The Secretary of State will bill the Department of Labor and Industry for \$45,000 for the cost of the election, and the amount will be paid out of the new revenues.

FISCAL IMPACT:

	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
<u>Expenditures:</u>		
Personal Services	\$953,000	\$1,059,000
Transfers	<u>45,000</u>	<u>0</u>
TOTAL	\$998,000	\$1,059,000
<u>Funding:</u>		
State Special Revenue (02)	\$998,000	\$1,059,000
<u>Revenues:</u>		
State Special Revenue (02)	\$998,000	\$1,072,000
<u>Net Impact to Fund Balance (Revenue minus Expenditure):</u>		
State Special Revenue (02)	\$0	\$13,000

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (S) Labor and Employment Relations -

04:59 PM

- SB 90** **SPONSOR:** Stang, Spook **SHORT TITLE:** Amend the Veterans' Public Employment Preference Law
 BY REQUEST OF: Joint Interim Subcommittee On Veterans' Needs
 REFERRED ON: 01/04/1999 **HEARD ON:** 01/19/1999
 EXECUTIVE ACTION: 01/29/1999 Bill Passed as Amended -- VOTE: 9 - 0
 FINAL DISPOSITION 03/25/1999 Chapter Number Assigned
-
- SB 117** **SPONSOR:** Thomas, Fred **SHORT TITLE:** Revise certain WC laws administered by Department of Labor & Industry
 BY REQUEST OF: Department Of Labor And Industry
 REFERRED ON: 01/04/1999 **HEARD ON:** 01/14/1999
 EXECUTIVE ACTION: 02/03/1999 Bill Passed as Amended -- VOTE: 9 - 0
 FINAL DISPOSITION 04/22/1999 Chapter Number Assigned
-
- SB 118** **SPONSOR:** Thomas, Fred **SHORT TITLE:** Submit assessment fee increase work comp employers to electors
 BY REQUEST OF: Department Of Labor And Industry
 REFERRED ON: 01/04/1999 **HEARD ON:** 01/14/1999
 EXECUTIVE ACTION: 02/03/1999 Bill Passed as Amended -- VOTE: 9 - 0
 FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee
-
- SB 131** **SPONSOR:** Swysgood, Chuck **SHORT TITLE:** Revise laws governing community service
 BY REQUEST OF: Department Of Labor And Industry
 REFERRED ON: 01/04/1999 **HEARD ON:** 01/14/1999
 EXECUTIVE ACTION: 01/15/1999 Bill Passed -- VOTE: 7 - 0
 FINAL DISPOSITION 03/24/1999 Chapter Number Assigned
-
- SB 202** **SPONSOR:** Bartlett, Sue **SHORT TITLE:** Clarify overtime pay for construction industry
 REFERRED ON: 01/14/1999 **HEARD ON:** 01/26/1999
 TABLED ON: 02/10/1999
 FINAL DISPOSITION 03/01/1999 (S) Missed Deadline for General Bill Transmittal
-
- SB 217** **SPONSOR:** Miller, Ken **SHORT TITLE:** Allow electrical apprentice to take license exam
 REFERRED ON: 01/16/1999 **HEARD ON:** 01/26/1999
 EXECUTIVE ACTION: 01/26/1999 Bill Passed -- VOTE: 7 - 0
 FINAL DISPOSITION 04/22/1999 (S) Died in Process
-

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on January 14, 1999 at
3:00 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)

Members Excused: Sen. Alvin Ellis (R)
Sen. Bill Wilson (D)

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddy McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 117, SB 118, SB 131,
1/7/1999

Executive Action: SB 21, SB 131

HEARING ON SB 117

Sponsor: SEN. FRED THOMAS, SD 30, Stevensville

Proponents: Kevin Braun, Department of Labor & Industry
Jerry Keck, Administrator, Department of Labor & Industry
Pat Haffey, Commissioner, Department of Labor & Industry
Bob Brown, Chairman of Governor's Workers' Compensation Regulation Advisory Council
George Wood, Executive Director, Montana Self-Insurers' Association
Jacqueline Lenmark, American Insurance Association
Mark Barry, State Fund
Mick Robinson, Governor's Office
Bob Worthington, Montana Municipal Insurance Authority
Howard Bailey, Montana Schools Group Insurance Authority
Ray Barnicoat, Montana Association of Counties
Pam Egan, Governor's Advisory Council

Opponents: Al Smith, Montana Trial Lawyers' Association
Don Judge, AFL-CIO

Opening Statement by Sponsor:

SEN. FRED THOMAS, SD 30, Stevensville, explained there is a lot of technical, clean-up items in SB 117 but it is not a housekeeping bill from a standpoint that this bill sets up an agenda for the future funding of the Department of Labor. In essence, the Workers' Compensation program has shown some success in that pay-outs have decreased. Two years ago, the fiscal statement on SB 290 said that in the next biennium there would be a short-fall, which was accurate. In lieu of the impending fiscal situation, the Governor has put together a council to take a look at this. The problem that we have is short-fall of revenue for the coming biennium of approximately \$1M. Recommendations have been established to handle this problem in

SENATE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

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the form of SB 117. **EXHIBIT(1)** Sen. Thomas informed the Committee there are a lot of amendments to this bill.

{Tape : 1; Side : A; Approx. Time Counter : 10 - 46}

Proponents' Testimony:

Kevin Braun, Department of Labor & Industry, stated he would like to address the Committee with the more technical aspects of the funding equation in the bill. It is fairly complicated because of the advent of Citizen's Initiative-75. There are five mechanisms to the bill which have the funding mechanisms built in. Section 3 provides a retroactive fix to a current piece of litigation the Department is facing with the Montana Schools Group over the old assessment methodology. Section 4 raises the cap which was imposed last session from 2.6% to 3.5%. Section 23 is the provision for coordination instructions to account for contingencies created by the CI-75. This provides if the ballot issue is unsuccessful to raise the cap from 2.6% to 3.5%, then Section 4 is void. If CI-75 is ruled unconstitutional, the cap is removed and the amount of funding is determined by the appropriation of the legislature. Section 26 is the retroactive instructions for Section 3. Section 27 of the bill terminates Section 3 as of July 1. **EXHIBIT(2)** If CI-75 is invalidated by the Court, then the cap is 3%. If CI-75 is upheld, the cap at 3% will be placed on the ballot and if passed will be 3%, if it doesn't pass, it will revert back to 2.6%.

Jerry Keck, Acting Administrator, Employment Relations Division, Department of Labor & Industry, addressed the funding short-fall they foresee in the Workers' Compensation Regulation function of the Department and how SB 117 will fix that problem. **EXHIBIT(3)**

Pat Haffey, Commissioner, Department of Labor & Industry, encouraged the Committee to support both SB 117 and SB 118. The bill contains housekeeping measures, funding issues and contains, in part, the results of the directive the Labor Committee gave to the Governor and to the Department of Labor & Industry through Senate Bill 290 of the 1997 Session. As part of that directive, the Labor Committee told the Governor to appoint a broad-based representation of all those people who participated in any way in

the Workers' Compensation program. The Governor appointed those people to evaluate what the appropriate regulatory functions of the Workers' Compensation System and to determine how those functions should be funded. **EXHIBIT(4)** This is the first time the Workers' Compensation regulatory system has been addressed and evaluated from such broad-based participants. The Advisory Council determined in the end that the functions which were currently being performed by the regulatory program were appropriated and it was determined that those functions should be appropriately funded. Finally, the Advisory Council made a number of recommendations they believed would enhance the regulatory program. Those recommendations would have cost approximately \$300,000 per year and they would have included an additional six F.T.E. to assume additional responsibilities in this program. She hopes that the Committee will honor the requests of the Advisory Council.

Bob Brown, Chairman of the Governor's Workers' Compensation Regulation Advisory Council, the 19-member council represented a broad cross-section of participants, including insurers, claimants, laborers, medical providers, the public and the Department of Labor. The advisory council began its work in October of 1997 and met periodically for almost a year. During that time the council accomplished several things. (1) It reviewed Montana's current Workers' Compensation regulatory system and the systems of other states. (2) It identified the mission and affirmed the goals outlined in the Workers' Compensation Occupational Safety Acts as appropriate goals for regulatory systems that promotes fairness, effectiveness, and efficiency in the Workers' Compensation system. (3) They examined the number of regulatory activities and programs needed to meet the mission of goals and identified what funding mechanisms should be used to support those activities. (4) They made recommendations to the Governor on ways to implement those goals and funding strategies. The council made these recommendations to Governor Racicot on October 16, 1998 and presented him with 27 recommendations for changes to the Workers' Compensation regulatory system. The council not only concluded the present regulatory functions performed by the Department are vital and should be continued to ensure the health of the Workers' Compensation system, but also that those functions

should be expanded. Senate Bill 117 contains only one of the recommendations by the council which is to remove the 2.6% cap and ensure adequate funding of the Department's regulatory functions. It does not contain expansion of regulatory functions which were discussed. He encouraged the passage of SB 117.

George Wood, Executive Secretary, Montana Self-Insureds' Association, which is the group of employers who self-insure their Workers' Compensation obligation. He is the first of the speakers who have to pay the bill. He stated it is always nice to have a tax that belongs to somebody else, and recommend that tax. With the amendments, the Montana Self-Insureds' Association supports SB 117 and SB 118. He commended the Department and said they worked very closely with them to draft the amendments to the bill and with the financing.

Jacqueline Lenmark, American Insurance Association, explained she is the second of those representing the parties who pay this tax. She represents private insurance companies under Plan 2. How this tax is to be assessed among Plans 1, 2, and 3, is something which was arrived at the last legislative session. Also, the appropriate rate of that tax has been discussed. Last session the rate was passed as 2.6%. The appropriateness of that rate has been studied again in light of the projected revenue short-falls. She supports SB 117 with the proposed amendments. Ms. Lenmark mentioned when the short-falls were identified by the Department there was some independent verification of that information. Plans 2 and 3 contacted the Nation Commission of Compensation Insurance, which is the organization that provides technical assistance to both Plan 2 and Plan 3 for rate-making purposes. It is the organization which collects rate, payment, and loss information and from that provides the assistance in developing the rates which are filed with the Insurance Commissioner. NCCI helped identify a more precise number which led to the agreement they had reached with the Department.

EXHIBIT(5) She said the American Insurance Association support the amendments she handed out. One element in the amendments is a 'policyholder surcharge' which will allow the tax which will fund the Department to be shown on the policyholder's statement of premium as a separate identifiable amount. It also protects how that tax is used and calculated for rate-making purposes so

that it does not go into rate-base as a double tax against the companies. The amendments are technical, and Ms. Lenmark will offer an explanation of those amendments to the best of her ability. It is identical language to the Subsequent Injury Fund legislation last session with one minor change, which is last session the State Fund was not included as having the ability to show that tax as a policyholder surcharge. The amendments amend both the Subsequent Injury Fund and the administrative assessment to require all companies to show that tax as a policyholder surcharge, so that the procedure is uniform. All three plans agree with these amendments.

Mark Barry, Montana State Fund, informed the Committee they are Plan 3 and also pay an assessment. As a supporter of the bill with the amendments, they realize the importance of a regulatory function. They need to maintain the integrity of the Workers' Compensation system. The State Fund supports this bill.

Mick Robinson, Governor's Office, stated with the amendments presented with this bill, they do believe the bill provides the means for the Department to maintain a healthy Workers' Compensation system throughout the state. There has been a lot of work between the Department and the insureds in evaluating, identifying and studying the underlying costs of regulation within the Department and developing the mechanism to adequately fund that particular level of expenditure. They are comfortable with the amendments as presented as allowing the Department to move forward with the intent of the legislature regarding a fairly efficient regulatory system.

Bob Worthington, Administrator, Montana Municipal Insurance Authority, which insures 94 cities and town across the State of Montana, was also part of the committee for SB 290. They support SB 117.

Howard Bailey, Administrator, Montana Schools Group Insurance Program, stated they are in support of SB 117 with the amendments.

Ray Barnicoat, Risk Manager, Montana Association of Counties, said they also support this bill.

Pam Egan, Governor's Workers' Compensation Regulatory Advisory Council, supports SB 117. EXHIBIT(6)

{Tape : 1; Side : B; Approx. Time Counter : 44 - 46; Comments : Tape to Side B during Pam Egan's testimony.}

Opponents:

Al Smith, Montana Trial Lawyers' Association, stated they understand the administration regulation of the Workers' Compensation system has to continue. They understand the funding mechanism, but they believe we are losing sight of the workers because of reduced benefits. Also, this is a housekeeping bill and Section 13 on page 14 of the bill, which is to add the term, "or mediation". In termination of benefits, the claimant can ask for benefits to be paid during that period of time they are waiting for mediation. This puts the worker between a rock and a hard spot in trying to negotiate fair settlement and adds another period of time that worker will be without benefits. At that time, they have no money for food, their families, etc. This makes more leverage for the insurer to get them to settle for a less fair amount. Section 15 deals with certification of a person with a disability. At the end of lines 28 through 29, it seems that for the workers' benefit, it should read "on the date of employment, re-employment or date of approval of the application". Section 20 on page 17, a new section dealing with confidentiality of records, has thrown up a red flag in that it provides information obtained which should not be open for public inspection except to public employees, when necessary to allow them to perform their public duties. The definition of public employees is pretty broad and could include the Department of Revenue, the IRS, police, etc. Mr. Smith said his association would like to see this clarified to include only employers for the purpose of Workers' Compensation, and not for any other purpose.

Don Judge, Montana State AFL-CIO, explained they are not opposed to the entire bill, but they are opposed to some of the contents of the legislation. They recognize because of the drastic cuts which have been made in benefits to the injured workers across the State of Montana since about 1987, the income based upon a

SENATE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

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percentage of benefits paid out has dropped accordingly. According to a recent statement by the Governor, the benefits will continue to drop. Therefore, the administrative cost in enforcing the Workers' Compensation laws in the State of Montana will become more difficult without the revenue needed to make that happen. He is concerned the bill drafters are not asking for a sufficient amount to make that happen. If this has to be submitted to the voters in accordance to CI-75, we will have to go back to the voters again in a couple years because the benefit levels will continue to drop and as long as CI-75 stands we will have to try to raise taxes again. They believe legislators need to be up front with the people and raise taxes to a level sufficient to take care of not only the problems occurring today, with an insufficiently funded administration, but also those problems which will continue next year and the following year. They concur with the objections raised by the Montana Trial Lawyers. Section 19 makes a change that Mr. Judge does not believe is good. This change suggests that rather than the Department having the authority to reduce or suspend compensation of the claimants who persist in unsanitary, injurious practices, etc., we are going to let the insurers make that decision. The current statute really provides that the burden of proof on either suspending or reducing payments falls upon the insurer, who must provide good evidence to the Department that there is justification for reducing those benefits. Now what this bill will set in motion is to require the employees to defend themselves after the decision has already been made. They believe this is just plain mean-spirited and there should be no place in the bill for this. When they asked the Department about this, the Department indicated there were very few cases of this. Mr. Judge stated the statute is not broken now and does not need to be fixed. He believes there is opportunity for great mischief in this, not one agency will be making the decision, a myriad of insurers who practice and play in the Workers' Compensation system in the State of Montana will be able to pick and choose when they make decisions. The burden for defense falls upon injured workers who can't pay attorneys because the system pays so poorly and fails to protect their interests. In the 'subsequent section' on page 20, confidentiality must be practiced. Confidentiality in terms of the public employees must

be defined. If this legislation passes, it should be fixed first.

{Tape : 1; Side : B; Approx. Time Counter : 55 - 60}

Questions from Committee Members and Responses:

Sen. Sue Bartlett asked John Wieda, Bureau Chief, Department of Labor and Industry, Employment Relations Division, why the insured should be able to reduce or suspend rather than the Department and why that was proposed in the bill.

John Wieda, Employment Relations Division, responded that they raised the issue on that particular statute because they believed there was enough 'tricky' parts in it and it needed some clarification. Their concern was that the statute is vague regarding what would be an unsanitary or injurious practice. If an insurer came to them to ask them to invoke this statute, they would have no evidence but what was first given to them. They have no way of investigating nor any way of making an objective assessment and whether or not what had been given to them was appropriate. In such a case, then, they would have to make a determination without any of their own information, which they felt was not a wise thing to do. By placing the situation as stated in the bill, the benefits disputes are placed under the same resolution jurisdiction which the rest of the benefits disputes are in under Section 72. This simply means that a person would go to mediation. He said Mr. Judge indicated that would require them to have an attorney. It doesn't require this, they can go through the mediation process without an attorney. This is not a huge issue with them, but they believe there is a trap in there in that the Department could get caught in the middle of a major dispute resolution over what right the Employment Relations Division has to invoke this statute. This is why it was raised for concern.

Closing by Sponsor:

Sen. Thomas closed by stating there are touchy issues with the Labor Department and insurance companies, this is why so many amendments were added after the bill was drafted. He said if we

don't adjust the formula, some General Fund money will have to make up the difference. He asks for support of this legislation.

{Tape : 1; Side : B; Approx. Time Counter : 61 - 67}

HEARING ON SB 118

Sponsor: SEN. FRED THOMAS, SD 30, Stevensville

(Please note: SB 118 is a companion bill to SB 117, also, all the proponents on SB 117 have indicated they are also proponents on SB 118)

Opponents: None.

Opening Statement by Sponsor:

SEN. FRED THOMAS, SD 30, Stevensville, introduced SB 118. He stated SB 118 will be submitted to the voters to request the final percentage that was adopted in SB 117. If it is set at 3 points in SB 117, this bill needs to be amended to correspond. EXHIBIT(7), EXHIBIT(8)

Proponents' Testimony:

Kevin Braun, Department of Labor & Industry, addressed the few limits in SB 118 to reflect change in percentage from 3.5 to 3.0 for the ballot issue, then to appropriately refer to Plan 1, as the insurer, other than the employer.

Jacqueline Lenmark, American Insurance Association, also supports this bill. She said the amendments they proposed with State Fund to SB 117 are identical.

Pat Haffey, Commissioner, Department of Labor & Industry, said they support SB 118.

George Wood, Executive Director, Montana Self-Insureds' Association, went on record as supporting SB 118.

Questions From The Committee: None.

SENATE BILL 117 FACT SHEET

I. THE PROBLEM

- 2.6% of benefits paid will not fund current level mandated workers' compensation regulatory functions

II. WHY WE HAVE THIS PROBLEM

- SB290 in the 1997 Session established a new method of funding workers' compensation regulation. The new method provides for an assessment of 2.6% of benefits paid (excluding any medical payments over \$200,000) in the preceding calendar year. This method becomes effective on July 1, 1999.
- SB290 fiscal note anticipated the new method would result in a shortfall of nearly \$500,000 for the 2001 biennium. To address this anticipated shortfall, SB290 authorized the Governor to create a Workers' Compensation Regulation Advisory Council to review the current regulatory system and make recommendations to the Governor regarding:
 - Appropriate regulatory goals
 - Necessary regulatory activities
 - Appropriate funding levels and funding mechanisms
- SB290 fiscal note also overestimated the level of benefits that would be paid. Benefits have continued to decline so that anticipated revenue is somewhere between \$400,000 and \$500,000 less than estimated in the SB290 fiscal note.
- SB290 fiscal note projected program costs for the FY99 biennium at a level approximately \$500,000 lower than adopted by the 1997 Session. In the amended proposal before you today, the Department of Labor has reduced its projected budget needs to be \$200,000 lower than this biennium through stringent cost control measures.
- The combination of known shortfall and overestimated assessment revenue result in a projected **total shortfall of approximately \$1 Million for the FY2001 biennium.**

III. HOW TO FIX THE PROBLEM

- The Advisory Council recommended that the current regulatory functions are appropriate and should be continued. The Council also recommended additional regulatory functions to improve the regulatory system.
- The Governor considered the Council recommendations. The Governor acknowledged that the Council recommendations for additional regulation and FTE are worthy goals; but declined to propose them because of the serious shortfall in funding current level regulation.
- The Advisory Council recommends removing the 2.6% assessment cap and that the legislature should determine the appropriate funding level through the appropriation process. The Governor concurs in the Advisory Council recommendations that the current level of regulation should be fully funded.
- The Department's proposes a 3% assessment would fund the current level proposed budget.

1. Page 4, line 24.

Following: "~~must administer~~"

Strike: "~~administers~~"

Insert: "must administer"

2. Page 8, line 2-3.

Following: "~~must administer~~"

Strike: "~~administer~~"

Insert: "must administer"

3. Page 8, line 9.

Following: "~~2.6%~~"

Strike: "~~3.5%~~"

Insert: "3.0%"

4. Page 10, line 24.

Following: "~~an insurer~~"

Insert: "or third party administrator"

5. Page 10, line 26.

Following: "~~format specified by~~"

Delete: "~~the department~~"

Insert: "department rule"

6. Page 13, line 28.

Following: "~~a practitioner~~"

Insert: "having substantial experience in the field of medicine concerned with the matters presented by the dispute and"

7. Page 14, line 27.

Following: "~~within 60 days~~"

Insert: "within 60 days"

8. Page 14 line 29.

Following: "~~or reemployment~~"

Strike: "~~the application is approved~~"

Insert: "of employment or reemployment. Certification is effective on the date the application is approved for a person who applies for certification more than 60 days after employment or reemployment, but before an injury occurs."

9. Page 16, line 6.

Following: "and it is"

Strike: "in fact"

Insert: "medically"

10. Page 18, line 24.

Following: "~~2.6% of~~"
Strike: "levied against"
Insert: "3.0% of"

11. Page 19, Lines 2-5.
Strike: All of lines 2-5.

TESTIMONY FOR SB117
SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE
JERRY KECK, ACTING ADMINISTRATOR
EMPLOYMENT RELATIONS DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
JANUARY 14, 1999

Mr. Chairman, members of the Committee, for the record my name is Jerry Keck. I am the acting administrator at the Employment Relations Division of the Department of Labor and Industry. I am going to address the reasons why we have a serious shortfall in funding for Workers' Compensation Regulation and how SB117 proposes to fix the problem.

Workers' Compensation regulation is funded with an assessment paid by self-insured employers, private insurers, and the State Fund. The Workers' Compensation Administrative Fund pays for the WC Court, administrative hearings and legal support in the Legal and Hearings Bureaus of the Department of Labor and parts of three Bureaus in the Employment Relations Division - Claims Assistance Bureau, the Regulations Bureau and the Safety Bureau.

Until July 1, 1999, the Workers' Compensation Administrative Fund assessment is based on the actual costs of regulation established by the appropriation and FTE authorized by the Legislature. This cost was charged back to the insurers in a complicated formula based on their actual use of the regulatory system.

SB290 from the 1997 Session changes the method of funding the Workers' Compensation Administrative Fund that becomes effective on July 1, 1999 to pay for the regulatory functions beginning with the FY2000 fiscal year. The new method sets a rate of 2.6% of benefits paid in the prior calendar year (excluding any amount over \$200,000 of medical costs paid on a single claim in a given year).

If you look at the assumptions stated in the Fiscal Note for SB290, we can see the reasons for the projected shortfall of approximately \$1,000,000 in the WC Administrative Fund. I have prepared a handout to help explain the shortfall.

First, let me direct your attention to the 1st line of the handout that shows the budget for all functions that are funded by the WC Administrative fund. Our actual Expenditures in FY98 were \$3,844,000; our appropriated budget for FY99 is nearly \$4 million. The initial MBARS budget request for FY2000 is \$4,143,000 and for FY2001 \$4,016,666. This represents a 4% increase in the FY2001 biennium over FY99 biennium. Only includes fixed cost and inflationary increases. In an effort to find a cooperative solution to this funding dilemma, the Department has gone back and scrutinized the budget and reduced the budget request to approximately \$3.8 million in each year of the coming biennium.

Secondly, let's look at the fiscal note projections for benefits paid in the calendar years of the current biennium and the FY01 biennium. As you can see, in February, 1997 when the SB290 fiscal note was prepared, the projections were that WC benefit payments were already leveling off. (See fiscal note projections line).

The next line shows the actual benefits paid in CY96 (Known in 2/97) and CY97 (\$9.5 million below the projection. The reason that the original version of SB117 requested an increase in the assessment rate to 3.5% was that the Department's original projections for actual benefits paid in CY98 were in the range of \$124 M dollars. This projection was based on actual numbers for the first 3 quarters of CY98 and a straight line projection for the final quarter.

In the process of seeking a solution to this problem, the Department has had discussions with representatives of the three insurance plans in the WC system and with many others who have an interest in the WC system. In our discussions with the insurers, we have all agreed that the level of benefits paid projected by the Department for CY98 and CY99 was too low. We now project that the benefits paid in CY98 will come out in the range of 128 to 133 million; and the amount of benefits paid in CY99 will be between 130 and 135 million.

Based on these new agreed upon assumption for the level of benefits paid, we have also agreed that increasing the rate of assessment from 2.6% to 3% of benefits paid will fund the Department's reduced level budget request. Keep in mind that this is not an increase in the amount of administrative assessment ultimately paid by employers. A 3% assessment rate will simply maintain the current level of cost if benefit payments end up at the high end of our current projections.

We Department is satisfied that this compromise solution will provide sufficient funding to continue our current level of services. It provides that the WC Court budget request for the 2001 biennium is fully funded. [REDACTED]

[REDACTED] In addition, we are anticipating approximately \$300,000 in savings if the Legislature adopts the legislative proposals from the House Joint Resolution 10 working group. The HJR10 group has recommended transferring jurisdiction for the adjudication of all WC benefit issues from the Department Hearing Bureau to the WC Court.

The Department is satisfied that this compromise avoids the need to cut or eliminate regulatory functions. That is in keeping with the recommendations of the Governor's Workers' Compensation Regulation Advisory Council. I would also like to express my personal appreciation to the representatives of the three insurance plans who were willing to listen to the Department's concerns and perspective on the funding dilemma and help to craft a cooperative solution. I urge your support for SB117.

WORKERS' COMPENSATION REVENUE/EXPENDITURE COMPARISONS

	FY98	FY99	FY00	FY01
BUDGET	3,843,999	3,987,548	4,174,582*	4,044,847*
REDUCED BUDGET			3,864,512	3,825,877
	CY96	CY97	CY98	CY99
FISCAL NOTE PROJECTIONS**	141,298,688	143,500,000**	142,300,000**	141,000,000**
BENEFITS PAID – CY	141,298,688	134,089,297	132,900,500***	135,252,000***
2.6% Assessment Rate			3,455,413	3,516,552
3.0% Assessment Rate			3,987,015	4,072,200

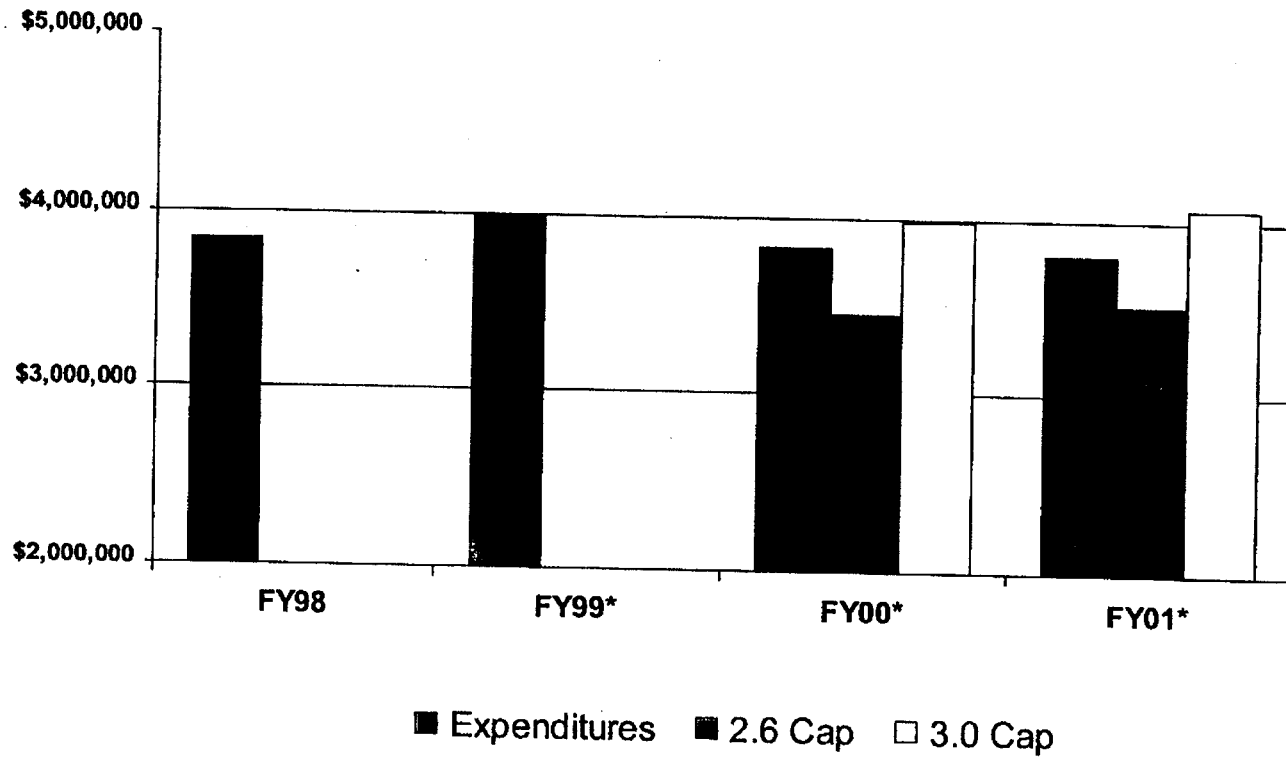
* MBARS Adjusted Budget Request

** SB290 (1997 Session) Fiscal Note Projection of WC benefits paid

*** January 1999 projection of WC benefits paid

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Workers' Compensation Expenditure/Revenue Projections January 1999



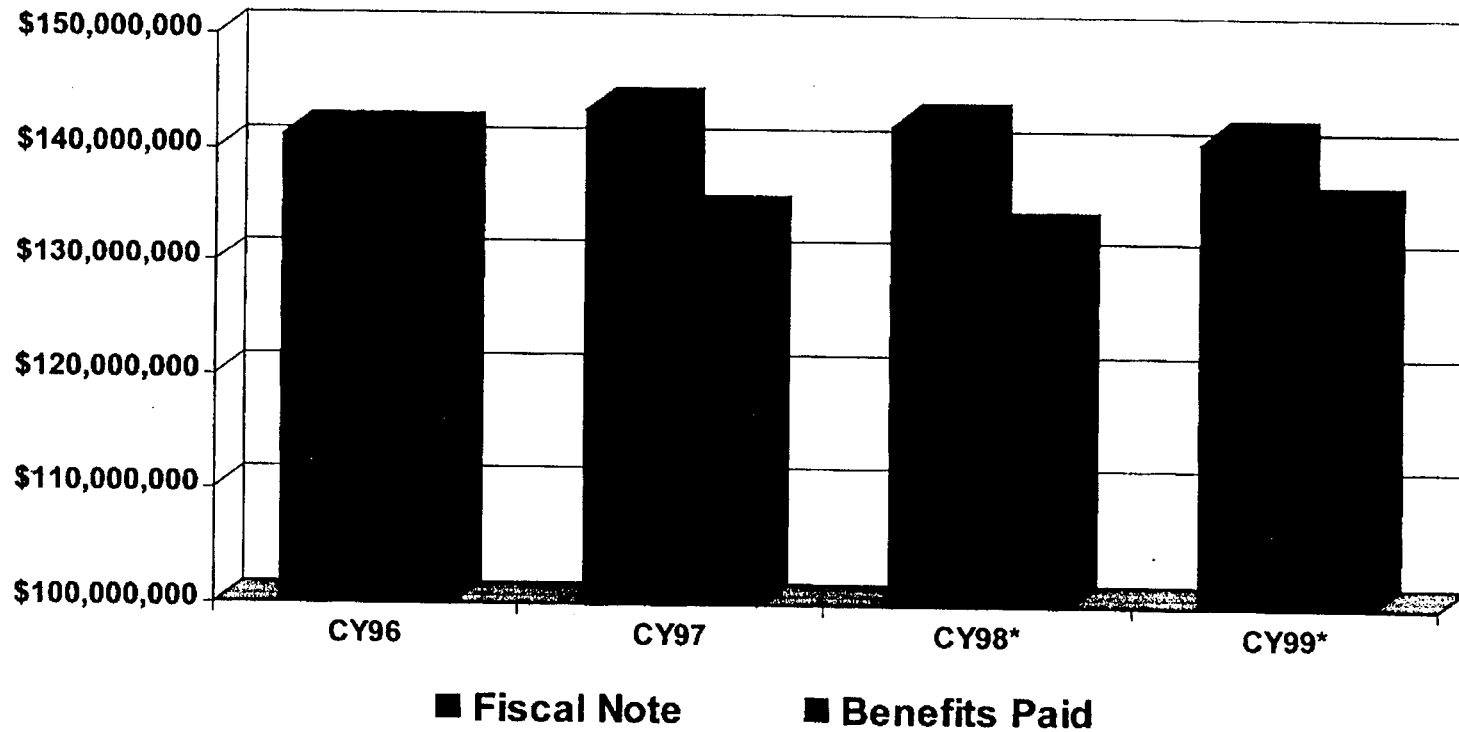
*Projections

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Workers' Compensation

Total Benefits Paid by Calendar Year

January 1999



*Projections

6. The 55th Legislature will need to provide guidance to the DOLI in determining what portions of the workers' compensation and occupational disease acts are to be eliminated or changed during FY99 in order to accommodate the reduced funding level in FY2000 resulting from an assessment based on 2.6% of benefits, or will adjust the percentage of assessments to fully fund the current statutory activities.
7. The impact to generated revenues because of the exemption granted in Section 2(b)(ii) is unable to be determined.

State Fund:

8. The net impact to the State Fund in future years would be to increase operating expenses by \$500,000 to \$600,000 each year over what the State Fund paid in FY 1996 in administrative assessment under current law.

Department of Labor and Industry:**TABLE 1 (FISCAL YEARS)****IMPACT OF PROPOSAL**

FISCAL YEAR	Total Benefits	WC Assessments-actual costs	If x 2.6%	Difference
1993	\$169,369,071	\$3,058,259	\$4,403,596	\$1,345,337
1994	\$143,722,195	\$3,745,805	\$3,736,777	(\$9,028)
1995	\$152,742,432	\$3,944,799	\$3,971,303	\$26,504
1996	\$148,026,132	\$3,623,108	\$3,848,679	\$225,571

TABLE 2 (CALENDAR YEARS for the Benefits Paid)

CALENDAR Yr	Total Benefits	WC Assessments-FY costs	If x 2.6%	Difference
per CALENDAR YR				
1996	\$141,298,688	\$3,623,108	\$3,673,766	\$50,658
1997	\$143,500,000	\$3,676,000 estimated	\$3,731,000	\$55,000
The following is based on funding levels as submitted to 55th Legislature for FY98 and FY99, pay plan included, but not including the Dept of Commerce's 02455 request.				
1998	\$142,300,000	\$3,676,208	\$3,699,800	\$23,592
1999	\$141,000,000	\$3,696,672	\$3,666,000	(\$30,672)
The expenditures assume a 3% inflation rate.				
2000	\$139,800,000	\$3,807,572	\$3,634,800	(\$172,772)
2001	\$138,700,000	\$3,921,800	\$3,606,200	(\$315,600)

TECHNICAL NOTES:**Department of Labor and Industry:**

1. Section 3 (2) is confusing, rather than to taxes collected on or after June 30, 1998, the phrase should state to benefits paid after calendar year 1997.
2. The obligation as stated in Section 3 (1) would be less ambiguous if the wording were "taxes due on or after June 30, 1997".
3. It is unclear if rehabilitation benefits are included in the understanding of benefits paid.
4. SB 375 requires that DOLI notify the three plans by March 31 of the amount of their respective subsequent injury fund (SIF) assessment. To determine the amount of the SIF assessment, the paid loss figures would be needed for administrative purposes by February 28 in order to determine the SIF assessment. Senate Bill 290 includes scheduling cycles for reporting of paid losses on March 31 of each year by Plan 1 self-insurers, Plan 2 private carriers, and the State Fund. These reporting schedules between the two bills need to be reconciled.

State Fund:

5. Section 2(b)(ii) refers to occurrences which are exempt from assessment. The term "occurrences" needs clarification.
6. Section 1 and Section 2 redefine fees as taxes. The State Fund has previously been exempted from paying taxes, i.e., premium taxes and corporate income taxes.
7. The State Fund has assumed Section 2 is effective 7/1/98. However, Section 3 of SB 290 is unclear whether the effective date of Section 2 is 7/1/98 or 7/1/99. If the effective date is 7/1/99, there is no fiscal impact to the State Fund until the fiscal year ending 6/30/2000 as explained in the long-range effects.

(Continued)

WORKERS' COMPENSATION REGULATION ADVISORY COUNCIL

Governor Racicot selected the following members to participate on the council:

	<u>Representing</u>
Bob Brown, Chairman	Public
Vicki Cocchiarella, Vice-Chairperson	House of Representatives
Jim Adams	Labor
Mark Barry	Plan III – State Fund
Pam Egan	Labor
Michele Fairclough	Plan II Insurers
Pat Haffey	Department of Labor & Industry
Gordon Hage	Public
Chase Hibbard	House of Representatives
Tom Kiely	Plan I Self-insureds
Jacqueline Lenmark	Plan II Insurers
Ray Linder	Employees
Dr. James Lovitt	Montana Medical Association
Bob Olsen	Montana Hospital Association
David Owen	Montana Chamber of Commerce
Gayle Sandholm	Public
Debbie Shea	Montana Senate
Dave Slovak	Employees
Fred Thomas	Montana Senate

Amendments to Senate Bill 117
Senate Labor and Employment Relations Committee

January 14, 1999

Requested by the State Compensation Insurance Fund

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5
DATE 1-12-99
BILL NO. SB 117

1. Title, line 29

Following: "FUND;"

Insert: "PROVIDING FOR PLAN NO. 2 INSURERS AND PLAN NO. 3, STATE FUND REGULATORY ASSESSMENT TO BE COLLECTED FROM POLICYHOLDERS AS A SURCHARGE BASED ON PREMIUM; AMENDING THE SUBSEQUENT INJURY FUND ASSESSMENT TO PROVIDE THE ABILITY FOR THE STATE FUND TO COLLECT THE ASSESSMENT FROM POLICYHOLDERS AS A SURCHARGE."

2. Title, Page 2, line 1

Following: "39-71-905,"

Insert: "39-71-915,"

3. Page 8, line 18

Following: "March"

Strike: "31"

Insert: "1"

4. Page 9.

Following: line 7

Insert: "(7) On or before March 31 of each year, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, beginning July 1, 2000, and continuing on each July 1 thereafter, shall annually notify plan No. 2 insurers and plan No. 3, the State Fund, of the premium surcharge rate to be effective for policies written or renewed annually on and after July 1 of each year. Each plan No. 2 insurer and plan No. 3, State Fund providing workers' compensation insurance shall collect from each of its policyholders an amount equal to the insured employer's regulatory assessment through a surcharge based on premium. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". Each assessment must be shown as a percentage of the total workers' compensation policyholder premium. The premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an

insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium."

5. Page 15

Following: line 1

Insert: "Section 16. Section 39-71-915, MCA, is amended to read:

"39-71-915. (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Montana Workers' Compensation Act without regard to the application of any deductible regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of \$200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each plan No. 2, insured employer, and plan No. 3, the state fund. The assessment amount is the total amount of paid losses reimbursed from the fund in the preceding calendar year and the expenses of administration less other income. The total assessment amount collected must be allocated among plan No. 1 employers, plan No. 2 insured employers, and plan No. 3, the state fund, based on paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before March 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed against the employer or the state fund for that calendar year. On or before March 31 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, State Fund of the premium surcharge rate to be effective for policies written or renewed on and after January 1 in that calendar year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the plan No. 2 and plan No. 3, State Fund assessment subject to premium surcharge for an individual plan No. 2 and plan No. 3, State Fund insured employer is a proportionate amount of total plan No. 2 and plan No. 3, State Fund paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 2 and plan No. 3, State Fund insured employer bore to the total paid losses of all plan No. 2 and plan No. 3, State Fund insurers during the preceding calendar year.

(6) Payment of assessments due must be made to the department semiannually on June 30 and December 31 of the year following the calendar year on which the assessment is based.

(7) Each plan No. 2 and plan No. 3, State Fund insurer providing workers' compensation insurance ~~may~~ shall collect from each of its policyholders an amount equal to the insured employer's fund assessment through a surcharge based on premium. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted ~~by~~ to the insured employer and must be identified as "workers' compensation policyholder surcharge". Each assessment must be shown as a percentage of the total workers' compensation policyholder premium. The premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

(8) All assessments paid to the department must be deposited in the fund.

Renumber: subsequent sections

6. Page 19, line 7

Following: "March"

Strike: "31"

Insert: "1"

7. Page 19.

Following: line 26

Insert: ~~(7) On or before March 31 of each year, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall beginning July 1, 2000, and continuing on each July 1 thereafter, shall annually notify plan No. 2 insurers and plan No. 3, the State Fund, of the premium surcharge rate to be effective for policies written or renewed annually on and after July 1 of each year. Each plan No. 2 insurer and plan No. 3, State Fund providing workers' compensation insurance shall collect from each of its policyholders an amount equal to the insured employer's regulatory assessment through a surcharge based on premium. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". Each assessment must be shown as a percentage of the total workers' compensation policyholder premium. The premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium."~~

Mr. Chairman and members of the committee, my name is Pam Egan. I work as a disability specialist with the National AFL-CIO Working for America Institute. But I am here today as a member of the Governor's Workers' Compensation Regulatory Advisory Council representing organized labor and injured workers.

Council From the perspective of disabled and injured workers trying to get through the workers compensation system, the ~~subcommittee's~~ final report and recommendations reflect a significant compromise from our strongly held position that the system needs more comprehensive and better regulation and that injured workers need more comprehensive and better access to information about their rights and responsibilities under the system -- information that comes from an independent source, not from the insurer or employer.

The Advisory Committee recommendations that are particularly important to those efforts include:

- the addition of employee and employer advisors to help injured workers and small businesses navigate their way through the system while minimizing the need for outside representation;
- obtaining a toll-free phone number for injured workers to use to obtain information and assistance;
- additional staff for safety compliance and training, and
- enhancing the Department's ability to collect and accurately analyze information about the operation of the system so that we can identify problems and uncover new areas of potential economy.

Of course, the Council also considered the funding mechanism required to pay for the regulatory system.

The 2.6%-of-benefits-paid funding mechanism in current law exists as the result of an 11th hour compromise in the 1997 session between the insurance industry and the Administration.

In contrast, the Governor's Workers' Compensation Regulatory Advisory Council recommendation -- that is the elimination of the 2.6% cap and full funding of current regulatory responsibilities plus what we see as a modest increase in the Department's ability to adequately regulate -- it is our position that that recommendation reflects the views of a much more balanced cross section of stakeholders in the work comp system. Rather than a deal between the Administration and the Insurance Industry, the Council's recommendations reflect a series of compromises forged in discussions between the State Fund, private insurers, the self insurance industry, adjusters, employers, the Chamber of Commerce, medical providers, hospitals, the Department, injured workers, labor organizations, public participants and legislators from both parties, including, of course Senators Thomas and Cocchiarella.

Unfortunately, the 3%-of-benefits-paid funding mechanism being proposed today, rather than reflecting the recommendation of the Council, is yet another deal between the industry and the Administration. And it is a deal that results from the drastic benefit cuts that injured workers have already been forced to absorb or, as the Governor writes in his letter to Council members, "...the continued decrease in benefits paid to claimants and the consequent decrease in projected assessment amounts."

So while the State Fund is cutting huge dividend checks to employers, including the State of Montana, private work comp insurers are raking in huge profits, and self insured employers are merrily going about their business, injured workers are being asked to step back and compromise their ability to access and police the system yet again.

From that perspective, we find ourselves between the rock of drastic reductions in the Department's ability to regulate this system under the existing 2.6 % funding deal, and the hard place of continuing to limp along with the status quo under the latest 3% agreement between the insurance and the Administration. (It's important to remember that the 2.6-3% change does not represent an increase in the actual amount of money that insurers are charged to regulate the system, just a change in the calculating mechanism to compensate for benefit cuts.)

Unfortunately, sometimes you just have to take what you can get and live to fight another day. So I am here neither to support nor oppose the 3% proposal, but simply to offer the foregoing perspective as a member of the Council representing injured workers and organized labor.

DATE 1-14-99



**PLEASE LEAVE PREPARED STATEMENT WITH
COMMITTEE SECRETARY**

DATE 1-14-99

SENATE COMMITTEE ON Labor & Employment
BILLS BEING HEARD TODAY: SB 117, SB 118, SB 131

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Pat Halliday	Labor & Industry	SB 117, 118, 131	✓	
George W. Wynn	The Wash. Post & Times Herald	SB 131	✓	
Terry Keck	Labor & Industry	SB 117, SB 118	✓	
George Wood	MT. Self Interest Assoc	SB 117, SB 118, SB 131	✓	
Reley Johnson	NFEB	SB 117, SB 118, SB 131	✓	
Bob Worthington	MMIA	SB 117, SB 118, SB 131	✓	
Howard Bailey	M 22F / school Gr	SB 117	✓	
Al Smith	MTLA	SB 117		✓
Tom Thun	Montana Nurses Assoc	SB 117	✓	
Bill Cain	OFFICE Community Service	SB 131	✓	
Dana McCoy	Gov's Office of Community Service	SB 131	✓	
Bob Simoneau	Community Services Advisory Council	SB 131	✓	
Mik Robinson	Graviner's Office	SB 117, SB 118	✓	
Ken Braun	Dept L & I	SB 117, 118	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1-14-99

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: SB 117, SB 118, SB 131

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Jan Metropoulos	Farmers	117	X	
Doy Judge	MT STATE AFL-CIO	SB 118		Amend
John Weida	Dept of Labor & Indus	117	/	
Jacqueline Lenmark	Am. Ins. Assn.	117 118	✓	Amend
Mark Barry	State Land	117 118		Amend
Charles Briggs	Seniors Office	131	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **SEN. WALTER MCNUTT**, on February 2, 1999 at
3:09 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddy McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 223, 1/27/1999; SB 242,
1/27/1999
Executive Action: SB 117; SB 118

{Tape : 1; Side : A; Approx. Time Counter : 1 - 16}

HEARING ON SB 223

Sponsor: SEN. GLENN ROUSH, SD 43, Cutbank

and the other is the person who can never get on as an apprentice. It appears this matter is off balance and the whole world is against it, but if the Committee would contact people in their districts, they would find many are for it and there is a need for increasing the number of young people trained into the industry. The salary of this trade is at the top of the state and many here now are from other states. EXHIBIT(las26a14), EXHIBIT(las26a15), EXHIBIT(las26a16) He agreed with the safety issues and does not want to see an apprentice get hurt. But a neighbor he knows well went to Colorado because he could not get a job here. Let's collect that problem of oversight and allow a one-to-one ratio here in the State of Montana. He encouraged a "do-pass" from the Committee.

EXHIBIT(las26a17) was faxed to SEN. TOM KEATING.

EXECUTIVE ACTION ON SB 117

Motion: SEN. THOMAS moved that SB 117 DO PASS.

Discussion: SEN. THOMAS introduced amendment EXHIBIT(las26a18). SEN. COCCHIARELLA drafted this amendment and Eddy McClure explained the amendment to the Committee.

Motion/Vote: SEN. THOMAS moved that THE AMENDMENTS BE ADOPTED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 118

Motion/Vote: SEN. THOMAS moved that SB 118 DO PASS AS AMENDED.

Discussion: SEN. THOMAS explained the amendment. EXHIBIT(las26a19)

Vote: Motion that SB 118 DO PASS AS AMENDED carried unanimously.

EXHIBIT(las26a20), EXHIBIT(las26a21), EXHIBIT(las26a22) were mailed to the Committee and received one week after the hearing.

* = SEN. Cocchiarella

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 18
DATE 2-2-99
BILL NO. SB 117

Amendments to Senate Bill No. 117
1st Reading Copy

Requested by Senator Fred Thomas

For the Senate Labor and Employment Relations Committee

Prepared by Eddy McClure
February 2, 1999

1. Title, page 1, lines 7 and 8.

Following: "COMPENSATION"

Strike: remainder of 7 through "LEGISLATURE" on line 8

Insert: "REGULATORY ASSESSMENT"

2. Title, page 1, line 29.

Following: "FUND;"

Insert: "REQUIRING THAT PLAN NO. 2 INSURERS AND PLAN NO. 3, THE STATE FUND, IDENTIFY THE COSTS OF THE REGULATORY ASSESSMENT THAT IS COLLECTED FROM INSURERS AS A POLICYHOLDER SURCHARGE BASED ON PREMIUM; AMENDING THE SUBSEQUENT INJURY FUND ASSESSMENT TO PROVIDE THE STATE FUND WITH THE ABILITY TO IDENTIFY THE COST OF THE ASSESSMENT AS A POLICYHOLDER SURCHARGE BASED ON PREMIUM;"

3. Title, page 2, line 1.

Following: "39-71-905,"

Insert: "39-71-915,"

4. Page 4, line 24.

Strike: "administers"

Insert: "is required to administer"

5. Page 8, line 3.

Strike: "administers"

Insert: "is required to administer"

6. Page 8, line 9.

Strike: "3.5%"

Insert: "3%"

7. Page 8, line 18.

Following: "March"

Strike: "31"

Insert: "1"

8. Page 8, line 25.

Following: "employer"

Insert: "or insurer"

9. Page 9, line 1.

Following: page 8, line 30

Insert: "(5) (a) Beginning July 1, 2000, each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from the insurer's policyholders an amount equal to the insurer's assessment through a surcharge based on premium. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers.

(b) The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". Each assessment surcharge must be shown as a percentage of the total workers' compensation policyholder premium.

(c) The portion of the plan No. 2 assessment identified as a premium surcharge for an individual plan No. 2 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 2 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 2 insured employers during the preceding calendar year.

(d) The portion of the plan No. 3 assessment identified as a premium surcharge for an individual plan No. 3 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 3 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 3 insured employers during the preceding fiscal year.

(e) On or before March 31, 2000, and each March 31 thereafter, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the insurer assessment identified as the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(f) The assessment provided for in subsection (1)(b), which will be identified as a premium surcharge, must be collected at the same time and in the same manner that the premium for the coverage is collected. This premium surcharge must be excluded

from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium."

Renumber: subsequent subsections

10. Page 10, line 24.

Following: "an insurer"

Insert: "or a third-party administrator"

Following: "who"

Strike: "submits"

Insert: "submitted"

11. Page 10, line 25.

Following: "in"

Strike: "1"

Insert: "the preceding"

12. Page 10, line 26.

Following: "by"

Strike: "the department"

Insert: "department rule"

13. Page 13, line 28.

Following: "practitioner"

Insert: "having substantial experience in the field of medicine concerned with the matters presented by the dispute and"

14. Page 14, line 27.

Following: "days"

Insert: "within 60 days"

15. Page 14, line 29.

Following: "reemployment"

Strike: "the application is approved"

Insert: "of employment or reemployment. Certification is effective on the date the application is approved for a person who applies for certification more than 60 days after employment or reemployment, but before an injury occurs"

16. Page 15.

Following: line 1

Insert: "Section 16. Section 39-71-915, MCA, is amended to read:

"39-71-915. **Assessment of insurers -- definition.** (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Montana Workers' Compensation Act without regard to the application of any deductible regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of \$200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each plan No. 2 ~~insured employer~~ insurer, and plan No. 3, the state fund. The assessment amount is the total amount of paid losses reimbursed from the fund in the preceding calendar year and the expenses of administration less other income. The total assessment amount collected must be allocated among plan No. 1 employers, plan No. 2 ~~insured employer~~ insurers, and plan No. 3, the state fund, based on paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before March 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed against the employer, plan No. 2 insurer, or the state fund for that calendar year. On or before March 31 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 ~~insurers~~ and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after ~~January 1~~ July 1 in that calendar year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the plan No. 2 assessment subject to premium surcharge for an individual plan No. 2 insured employer is a proportionate amount of total plan No. 2 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 2 insured employer bore to the total paid losses of all plan No. 2 insurers during the preceding calendar year.

(6) The portion of the state fund assessment subject to premium surcharge for a state fund insured employer is a proportionate amount of total state fund paid losses during the preceding calendar year that is equal to the percentage that the

total paid losses of the individual state fund insured employer bore to the total paid losses of state fund insured employers during the preceding calendar year.

~~(6)~~(7) Payment of assessments due must be made to the department semiannually on June 30 and December 31 of the year following the calendar year on which the assessment is based.

~~(7)~~(8) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, may shall collect from ~~each of its policyholders an amount equal to the insured employer's fund~~ the assessment through a surcharge based on premium in subsection (2). When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation ~~policyholder~~ subsequent injury fund surcharge". Each assessment must be shown as a percentage of the total workers' compensation policyholder premium. ~~The~~ This premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

~~(8)~~(9) All assessments paid to the department must be deposited in the fund."

{Internal References to 39-71-915: None.}"

Renumber: subsequent sections

17. Page 16, line 6.

Following: "is"

Strike: "in fact"

Insert: "medically"

* 18. Page 17, line 2.

Following: "disclosed"

Insert: ", sold,"

* 19. Page 17, line 3.

Following: "except to"

Strike: "public"

Insert: "department"

* 20. Page 17, line 4.

Following: "duties"

Insert: "under Title 39, chapters 71 and 72,"

21. Page 17, line 13.

Strike: "is void"

Insert: ", amending 39-71-201, must read as follows:"

"Section 4. Section 39-71-201, MCA, is amended to read:

"39-71-201. (Temporary) Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts the department ~~must administer~~ is required to administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administrative fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, an assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than \$500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to assessment. The assessments must be sufficient to fund the ~~direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable portion of the indirect costs of regulating plan No. 3.~~ costs of the department's administration of the Worker's Compensation and Occupational Disease Acts and the statutory occupational safety acts administered by the department. The assessment must be apportioned between the three plans using proper accounting and cost allocation procedures. Other sources of revenue, including unexpended funds from the preceding fiscal year, must be used to reduce the costs before levying the

assessments.

(2) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(3) Disbursements from the administration money must be made after being approved by the department upon a claim.

(Terminates June 30, 1999--sec. 8, Ch. 385, L. 1997.)

39-71-201. (Effective July 1, 1999) Administration fund.

(1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts the department ~~must administer~~ is required to administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administrative fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be 2.6% of the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational Disease Act without regard to the application of any deductible whether the employer or the insurer pays the losses:

(i) total compensation benefits paid; and

(ii) except for medical benefits in excess of \$200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March ~~31~~ 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (1)(b).

(3) An assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than \$500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to an initial assessment equal to the minimum assessment against plan No. 1 employers and plan No. 2 insurers.

(4) Payment of the assessment required by this section must be submitted by the employer or insurer under plan No. 1, plan No. 2, or plan No. 3 in:

(a) one installment made on or before July 1; or
(b) two equal installments made on or before July 1 and December 31 of each year. If an employer or insurer fails to pay the assessment required under this section, the department may impose a fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%.

(5) (a) Beginning July 1, 2000, each plan No. 2 insured employer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from the insurer's policyholders an amount equal to the insurer's assessment through a surcharge based on premium. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers.

(b) The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". Each assessment surcharge must be shown as a percentage of the total workers' compensation policyholder premium.

(c) The portion of the plan No. 2 assessment identified as a premium surcharge for an individual plan No. 2 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 2 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 2 insured employer during the preceding calendar year.

(d) The portion of the plan No. 3 assessment identified as a premium surcharge for an individual plan No. 3 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 3 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 3 insured employers during the preceding fiscal year.

(e) On or before March 31, 2000, and each March 31 thereafter, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the insurer assessment identified as the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(f) The assessment provided for in subsection (1)(b), which will be identified as a premium surcharge, must be collected at the same time and in the same manner that the premium for the coverage is collected. This premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in

accordance with the procedures applicable to the nonpayment of premium.

~~(5)~~(6) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

~~(6)~~(7) Disbursements from the administration money must be made after being approved by the department upon claim for disbursement.""

{ Internal References to 39-71-201: (all OK)
39-71-401 39-71-435 }

22. Page 18, line 18.

Strike: "administers"

Insert: "is required to administer"

23. Page 18, line 24.

Following: "of"

Strike: "levied against"

Insert: "3% of"

24. Page 19, line 2 through page 19, line 5.

Strike: subsection (c) in its entirety

25. Page 19, line 7.

Following: "March"

Strike: "31"

Insert: "1"

26. Page 19, line 14.

Following: "employer"

Insert: "or insurer"

27. Page 19.

Following: line 19

Insert: "(5)(a). Beginning July 1, 2000, each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from the insurer's policyholders an amount equal to the insurer's assessment through a surcharge based on premium. When collected, assessments may not constitute an element of loss for the

purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers.

(b) The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". Each assessment surcharge must be shown as a percentage of the total workers' compensation policyholder premium.

(c) The portion of the plan No. 2 assessment identified as a premium surcharge for an individual plan No. 2 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 2 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 2 insured employers during the preceding calendar year.

(d) The portion of the plan No. 3 assessment identified as a premium surcharge for an individual plan No. 3 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 3 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 3 insured employers during the preceding fiscal year.

(e) On or before March 31, 2000, and each March 31 thereafter, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the insurer assessment identified as the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(f) The assessment provided for in subsection (1)(b), which will be identified as a premium surcharge, must be collected at the same time and in the same manner that the premium for the coverage is collected. This premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium."

Renumber: subsequent subsections

28. Page 20, line 3.

Following: "3,"

Strike: "22 through 24, 26, 27"

Insert: "23 through 25, 27, 28"

29. Page 20, line 5.

Following: "1"
Strike: "and"
Insert: ", "
Following: "through"
Strike: "21"
Insert: "15, and 17 through 22"

30. Page 20, line 6.

Following: line 5

Insert: "(3) [Section 16] is effective July 1, 2000."

- END -

[illegible]



SENATE STANDING COMMITTEE REPORT

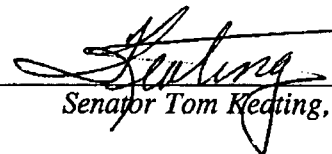
February 3, 1999

Page 1 of 11

Mr. President:

We, your committee on Labor and Employment Relations report that Senate Bill 117 (first reading copy – white) do pass as amended.

Signed:


Senator Tom Keating, Chair

And, that such amendments read:

1. Title, page 1, lines 7 and 8.

Following: "COMPENSATION"

Strike: remainder of 7 through "LEGISLATURE" on line 8

Insert: "REGULATORY ASSESSMENT"

2. Title, page 1, line 29.

Following: "FUND;"

Insert: "REQUIRING THAT PLAN NO. 2 INSURERS AND PLAN NO. 3, THE STATE FUND, IDENTIFY THE COSTS OF THE REGULATORY ASSESSMENT THAT IS COLLECTED FROM INSURERS AS A POLICYHOLDER SURCHARGE BASED ON PREMIUM; AMENDING THE SUBSEQUENT INJURY FUND ASSESSMENT TO PROVIDE THE STATE FUND WITH THE ABILITY TO IDENTIFY THE COST OF THE ASSESSMENT AS A POLICYHOLDER SURCHARGE BASED ON PREMIUM;"

3. Title, page 2, line 1.

Following: "39-71-905,"

Insert: "39-71-915,"

4. Page 4, line 24.

Strike: "administers"

Insert: "is required to administer"

5. Page 8, line 3.

Committee Vote:

Yes 9, No 0.

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Strike: "administers"

Insert: "is required to administer"

6. Page 8, line 9.

Strike: "3.5%"

Insert: "3%"

7. Page 8, line 18.

Following: "March"

Strike: "31"

Insert: "1"

8. Page 8, line 25.

Following: "employer"

Insert: "or insurer"

9. Page 9, line 1.

Following: page 8, line 30

Insert: "(5) (a) Beginning July 1, 2000, each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from the insurer's policyholders an amount equal to the insurer's assessment through a surcharge based on premium. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers.

(b) The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". Each assessment surcharge must be shown as a percentage of the total workers' compensation policyholder premium.

(c) The portion of the plan No. 2 assessment identified as a premium surcharge for an individual plan No. 2 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 2 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 2 insured employers during the preceding calendar year.

(d) The portion of the plan No. 3 assessment identified as a premium surcharge for an individual plan No. 3 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 3 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all

plan No. 3 insured employers during the preceding fiscal year.

(e) On or before March 31, 2000, and each March 31 thereafter, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the insurer assessment identified as the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(f) The assessment provided for in subsection (1)(b), which will be identified as a premium surcharge, must be collected at the same time and in the same manner that the premium for the coverage is collected. This premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium."

Renumber: subsequent subsections

10. Page 10, line 24.

Following: "an insurer"

Insert: "or a third-party administrator"

Following: "who"

Strike: "submits"

Insert: "submitted"

11. Page 10, line 25.

Following: "in"

Strike: "1"

Insert: "the preceding"

12. Page 10, line 26.

Following: "by"

Strike: "the department"

Insert: "department rule"

13. Page 13, line 28.

Following: "practitioner"

Insert: "having substantial experience in the field of medicine concerned with the matters presented by the dispute and"

14. Page 14, line 27.

Following: "days"

Insert: "within 60 days"

15. Page 14, line 29.

Following: "reemployment"

Strike: "the application is approved"

Insert: "of employment or reemployment. Certification is effective on the date the application is approved for a person who applies for certification more than 60 days after employment or reemployment, but before an injury occurs"

16. Page 15.

Following: line 1

Insert: "Section 16. Section 39-71-915, MCA, is amended to read:

"39-71-915. **Assessment of insurers -- definition.** (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Montana Workers' Compensation Act without regard to the application of any deductible regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and
(b) except for medical benefits in excess of \$200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each plan No. 2 ~~insured employer~~ insurer, and plan No. 3, the state fund. The assessment amount is the total amount of paid losses reimbursed from the fund in the preceding calendar year and the expenses of administration less other income. The total assessment amount collected must be allocated among plan No. 1 employers, plan No. 2 ~~insured employer~~ insurers, and plan No. 3, the state fund, based on paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before March 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed against the employer, plan No. 2 insurer, or the state fund for that calendar year. On or before March 31 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after ~~January 1~~ July 1 in that ~~calendar~~ year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the plan No. 2 assessment subject to

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premium surcharge for an individual plan No. 2 insured employer is a proportionate amount of total plan No. 2 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 2 insured employer bore to the total paid losses of all plan No. 2 insurers during the preceding calendar year.

(6) The portion of the state fund assessment subject to premium surcharge for a state fund insured employer is a proportionate amount of total state fund paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual state fund insured employer bore to the total paid losses of state fund insured employers during the preceding calendar year.

~~(6)~~ (7) Payment of assessments due must be made to the department semiannually on June 30 and December 31 of the year following the calendar year on which the assessment is based.

~~(7)~~ (8) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, may shall collect from ~~each of its policyholders an amount equal to the insured employer's fund~~ the assessment through a surcharge based on premium in subsection (2). When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation ~~policyholder~~ subsequent injury fund surcharge". Each assessment must be shown as a percentage of the total workers' compensation policyholder premium. ~~The~~ This premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

~~(8)~~ (9) All assessments paid to the department must be deposited in the fund.""

Renumber: subsequent sections

17. Page 16, line 6.

Following: "is"

Strike: "in fact"

Insert: "medically"

18. Page 17, line 2.

Following: "disclosed"

Insert: ", sold,"

19. Page 17, line 3.

Following: "except to"

Strike: "public"

Insert: "department"

20. Page 17, line 4.

Following: "duties"

Insert: "under Title 39, chapters 71 and 72,"

21. Page 17, line 13.

Strike: "is void"

Insert: ", amending 39-71-201, must read as follows:"

"Section 4. Section 39-71-201, MCA, is amended to read:

"39-71-201. (Temporary) Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts the department ~~must administer~~ is required to administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administrative fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, an assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than \$500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to assessment. The assessments must be sufficient to fund ~~the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable portion of the indirect costs of regulating plan No. 3.~~ costs of the department's administration of the Worker's

Compensation and Occupational Disease Acts and the statutory occupational safety acts administered by the department. The assessment must be apportioned between the three plans using proper accounting and cost allocation procedures. Other sources of revenue, including unexpended funds from the preceding fiscal year, must be used to reduce the costs before levying the assessments.

(2) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(3) Disbursements from the administration money must be made after being approved by the department upon a claim. (Terminates June 30, 1999--sec. 8, Ch. 385, L. 1997.)

39-71-201. (Effective July 1, 1999) Administration fund.

(1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts the department ~~must administer~~ is required to administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administrative fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be 2.6% of the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational Disease Act without regard to the application of any deductible whether the employer or the insurer pays the losses:

(i) total compensation benefits paid; and

(ii) except for medical benefits in excess of \$200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 31 in the form and containing the information required by the department a report of paid losses pursuant to subsection (1)(b).

(3) An assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than \$500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2

insurer is subject to an initial assessment equal to the minimum assessment against plan No. 1 employers and plan No. 2 insurers.

(4) Payment of the assessment required by this section must be submitted by the employer or insurer under plan No. 1, plan No. 2, or plan No. 3 in:

(a) one installment made on or before July 1; or

(b) two equal installments made on or before July 1 and December 31 of each year. If an employer or insurer fails to pay the assessment required under this section, the department may impose a fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%.

(5) (a) Beginning July 1, 2000, each plan No. 2 insured employer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from the insurer's policyholders an amount equal to the insurer's assessment through a surcharge based on premium. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers.

(b) The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". Each assessment surcharge must be shown as a percentage of the total workers' compensation policyholder premium.

(c) The portion of the plan No. 2 assessment identified as a premium surcharge for an individual plan No. 2 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 2 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 2 insured employer during the preceding calendar year.

(d) The portion of the plan No. 3 assessment identified as a premium surcharge for an individual plan No. 3 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 3 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 3 insured employers during the preceding fiscal year.

(e) On or before March 31, 2000, and each March 31 thereafter, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the insurer assessment identified as the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(f) The assessment provided for in subsection (1)(b), which will be identified as a premium surcharge, must be collected at the same time and in the same manner that the premium for the coverage is collected. This premium surcharge must be excluded

from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

~~(5)~~(6) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

~~(6)~~(7) Disbursements from the administration money must be made after being approved by the department upon claim for disbursement.""

22. Page 18, line 18.

Strike: "administers"

Insert: "is required to administer"

23. Page 18, line 24.

Following: "of"

Strike: "levied against"

Insert: "3% of"

24. Page 19, line 2 through page 19, line 5.

Strike: subsection (c) in its entirety

25. Page 19, line 7.

Following: "March"

Strike: "31"

Insert: "1"

26. Page 19, line 14.

Following: "employer"

Insert: "or insurer"

27. Page 19.

Following: line 19

Insert: "(5)(a) Beginning July 1, 2000, each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from the insurer's policyholders an amount equal to the insurer's assessment through a surcharge based on premium. When collected,

assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers.

(b) The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". Each assessment surcharge must be shown as a percentage of the total workers' compensation policyholder premium.

(c) The portion of the plan No. 2 assessment identified as a premium surcharge for an individual plan No. 2 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 2 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 2 insured employers during the preceding calendar year.

(d) The portion of the plan No. 3 assessment identified as a premium surcharge for an individual plan No. 3 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 3 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 3 insured employers during the preceding fiscal year.

(e) On or before March 31, 2000, and each March 31 thereafter, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the insurer assessment identified as the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(f) The assessment provided for in subsection (1)(b), which will be identified as a premium surcharge, must be collected at the same time and in the same manner that the premium for the coverage is collected. This premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium."

Renumber: subsequent subsections

28. Page 20, line 3.

Following: "3,"

Strike: "22 through 24, 26, 27"

Insert: "23 through 25, 27, 28"

29. Page 20, line 5.

Following: "1"
Strike: "and"
Insert: ", "
Following: "through"
Strike: "21"
Insert: "15, and 17 through 22"

30. Page 20, line 6.

Following: line 5

Insert: "(3) [Section 16] is effective July 1, 2000."

- END -

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (H) Business and Labor -

01:05 PM

- SB 115** SPONSOR: Stang, Spook SHORT TITLE: Exclude employees waiving coverage from small employer eligibility
BY REQUEST OF: State Auditor
REFERRED ON: 02/16/1999 HEARD ON: 03/02/1999
EXECUTIVE ACTION: 03/02/1999 Bill Concurred -- VOTE: 15 - 0
FINAL DISPOSITION 03/17/1999 Chapter Number Assigned
-
- SB 117** SPONSOR: Thomas, Fred SHORT TITLE: Revise certain WC laws administered by Department of Labor & Industry
BY REQUEST OF: Department Of Labor And Industry
REFERRED ON: 02/16/1999 HEARD ON: 03/08/1999
EXECUTIVE ACTION: 03/15/1999 Bill Concurred -- VOTE: 18 - 0
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned
-
- SB 118** SPONSOR: Thomas, Fred SHORT TITLE: Submit assessment fee increase work comp employers to electors
BY REQUEST OF: Department Of Labor And Industry
REFERRED ON: 02/16/1999 HEARD ON: 03/08/1999
TABLED ON: 03/08/1999
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee
-
- SB 123** SPONSOR: Crismore, William SHORT TITLE: Septic disposal fee increase
BY REQUEST OF: Department Of Environmental Quality
REFERRED ON: 02/18/1999 HEARD ON: 03/11/1999
TABLED ON: 03/11/1999
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee
-
- SB 125** SPONSOR: Crismore, William SHORT TITLE: Increase base of entities subject to septic disposal fee
BY REQUEST OF: Department Of Environmental Quality
REFERRED ON: 02/18/1999 HEARD ON: 03/11/1999
TABLED ON: 03/11/1999
FINAL DISPOSITION 04/22/1999 (H) Died in Standing Committee
-
- SB 126** SPONSOR: Crismore, William SHORT TITLE: Septic disposal and licensure requirements
BY REQUEST OF: Department Of Environmental Quality
REFERRED ON: 02/18/1999 HEARD ON: 03/11/1999
EXECUTIVE ACTION: 03/22/1999 Bill Concurred as Amended -- VOTE: 17 - 1
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned
-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By CHAIRMAN BRUCE SIMON, on March 8, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: Rep. Roy Brown (R)

Members Absent: None.

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 304, SB 118, SB 234, SB
117, SB 114,, 3/5/1999
Executive Action: SB 27, SB 114, SB 118, SB
304, SB 234

HEARING ON SB 117

Opening Statement by Sponsor: Senator Thomas, introduced SB 117.
EXHIBIT(4)

{Tape : 2; Side : A; Approx. Time Counter : 471 - 500}

{Tape : 2; Side : B; Approx. Time Counter : 0 - 44}

Proponents' Testimony: Kevin Braun, attorney, Dept. of Labor
{Tape : 2; Side : B; Approx. Time Counter : 44 - 180}

Jerry Keck, Acting Administrator of Labor Relations.
{Tape : 2; Side : B; Approx. Time Counter : 180 - 340}

Commissioner Haffey, Dept of Labor
{Tape : 2; Side : B; Approx. Time Counter : 340 - 383}

Jacqueline Lenmark, American Insurance Assn.
{Tape : 2; Side : B; Approx. Time Counter : 340 - 435}

Nancy Butler, State Fund
{Tape : 2; Side : B; Approx. Time Counter : 435 - 442}

Geo Wood, Ex. Secy, of Mt self insurers.
{Tape : 2; Side : B; Approx. Time Counter : 442 - 451}

Opponents' Testimony: Allen Croester, Mt School Group
{Tape : 2; Side : B; Approx. Time Counter : 451 - 500}

Questions from Committee Members and Responses: Rep. Sliter,
Krenzler, Tuss, Pavlovich, Squires, Ewer and Simons question
witnesses.
{Tape : 3; Side : A; Approx. Time Counter : 0 - 449}

Closing by Sponsor: Senator Thomas closed.
{Tape : 3; Side : A; Approx. Time Counter : 449 - 500}

HEARING ON SB 114

Opening Statement by Sponsor: Senator Thomas, SD 31, introduced
SB 114.

{Tape : 3; Side : B; Approx. Time Counter : 0 - 75}

Proponents' Testimony: Hank Hudson, Health Dept.
{Tape : 3; Side : B; Approx. Time Counter : 75 - 134}

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 2/8/99

NAME	PRESENT	ABSENT	EXCUSED
Chairman Bruce Simon	X		
Rep. Paul Sliter	X		
Rep. Bob Pavlovich	X		
Rep. Joe Barnett	X		
Rep. Rod Bitney	X X	X	
Rep. Sylvia Bookout-Reineke	X		
Rep. Roy Brown			X
Rep. David Ewer	X		
Rep. Billie Krenzler	X		
Rep. Bob Lawson	X		
Rep. Gay Ann Masolo	X		
Rep. Gary Matthews	X		
Rep. Joe McKenney	X		
Rep. Carolyn Squires	X		
Rep. Jay Stovall	X		
Rep. Carley Tuss	X		
Rep. Carol Juneau	X		
Rep. Cliff Trexler	X		

MONTANA HOUSE OF REPRESENTATIVES VISITORS REGISTER

DATE 3-8-99

BILL NO. SB 117

SPONSOR(S) _____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

NAME

ADDRESS

REPRESENTING

☒ POI	Jerry Keck	2440 Mitchell Gulch E. Helena	Department of Labor
☐ POI	Howard Bailey	15. MT ave Helena	Schools Group
☐ POI	Pat Haffey	Walt Sullivan	Dept of Labor and
☐ POI	Ken Braun	Helena	Do Ltr
☐ POI	George Wood	Missoula	MT Self-Tanning Assoc.
☐ POI	Allen Chronister	Helena	Mont. Schools Group
☒ POI	Jacqueline Germark	Helena	Am. Ins. Assn
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on March 15, 1999 at
8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: Rep. Rod Bitney (R)

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 130, SB 132, SB 390, SB
399, 3/3/1999
Executive Action: SB 130, SB 117

Informational Testimony: Kevin Braun, Dept. of Labor offers amendments.

{Tape : 1; Side : B; Approx. Time Counter : 309 - 337}

Questions from Committee Members and Responses:

Reps. Ewer and Sliter questions Steve Browning. Rep. Squires questions George Wood. EXHIBIT(buh58a03)

{Tape : 1; Side : B; Approx. Time Counter : 337 - 475}

Rep. Sliter questions Senator Bishop.

{Tape : 1; Side : B; Approx. Time Counter : 475 - 485}

Closing by Sponsor: Senator Bishop closed SB 390.

{Tape : 1; Side : B; Approx. Time Counter : 485 - 500}

EXECUTIVE ACTION ON SB 117

Motion/Vote: REP. SLITER moved that SB 117 BE CONCURRED IN.

Motion carried unanimously. EXHIBIT(buh58a04)

{Tape : 2; Side : A; Approx. Time Counter : 0 - 51}

HEARING ON SB 399

Opening Statement by Sponsor: Senator Jabs, SD 3, introduced SB 399.

{Tape : 2; Side : A; Approx. Time Counter : 51 - 92}

Proponents' Testimony: Steve Browning, Montana Hospital Assn. and Health Care Providers.

{Tape : 2; Side : A; Approx. Time Counter : 92 - 109}

Julie Marianne, Havre Hospital Record Information Director. EXHIBIT(buh58a05)

{Tape : 2; Side : A; Approx. Time Counter : 109 - 173}

Julie Gaymor, Director, Medical Records at Missoula Medical Center. EXHIBIT(buh58a06)

{Tape : 2; Side : A; Approx. Time Counter : 173 - 230}

Judy Jackson, Director of Medical Records, Shodair Hospital, Helena, MT. EXHIBIT(buh58a07)

{Tape : 2; Side : A; Approx. Time Counter : 230 - 289}

Jerry Lindorf, Montana Medical Assn.

{Tape : 2; Side : A; Approx. Time Counter : 289 - 296}



DEPARTMENT OF LABOR AND INDUSTRY

COMMISSIONER'S OFFICE

MARC RACICOT, GOVERNOR

P.O. BOX 1728

STATE OF MONTANA

TELEPHONE: (406) 444-3555
FAX: (406) 444-1394
TDD: (406) 444-0532

HELENA, MONTANA 59624-1728
DATE 3/15/99
SB 299 117

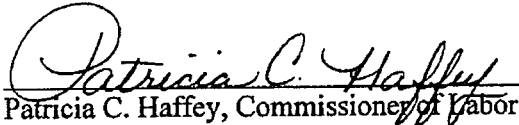
March 15, 1999

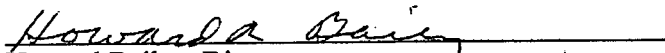
TO: Bruce Simon, Chairman
Members of the House Business and Labor Committee

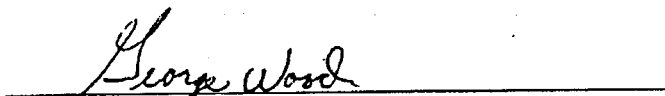
RE: SB 117

The Department of Labor & Industry and the Montana Schools Group Workers' Compensation Risk Retention Program have entered into a settlement agreement to fully resolve all issues pending in the Montana Supreme Court as Cause No. 98-240. With this settlement, all pending litigation over the current method for assessing the workers' compensation administrative fee is resolved.

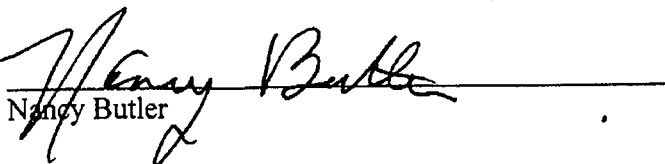
The undersigned agree that settlement of the Schools Group lawsuit eliminates the need to amend Section 3 and 27 of SB 117. We request that the Committee do concur in SB 117.


Patricia C. Haffey, Commissioner of Labor


Howard Bailey, Director
Montana School Services


George Wood

Jacqueline Lenmark


Nancy Butler

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 3/15/91

NAME	PRESENT	ABSENT	EXCUSED
Chairman Bruce Simon	X		
Rep. Paul Sliter	X		
Rep. Bob Pavlovich	X		
Rep. Joe Barnett	X		
Rep. Rod Bitney	X	+	
Rep. Sylvia Bookout-Reineke	X		
Rep. Roy Brown	X		
Rep. David Ewer	X		
Rep. Billie Krenzler	X		
Rep. Bob Lawson	X		
Rep. Gay Ann Masolo	X		
Rep. Gary Matthews	X		
Rep. Joe McKenney	X		
Rep. Carolyn Squires	X		
Rep. Jay Stovall	X		
Rep. Carley Tuss	X		
Rep. Carol Juneau	X		
Rep. Cliff Trexler	X		



HOUSE STANDING COMMITTEE REPORT

March 15, 1999

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** report that **Senate Bill 117** (third reading copy -- blue) be concurred in.

Signed:


Representative Bruce Simon, Chair

To be carried by Representative Bruce Simon

- END -

Committee Vote:
Yes 18, No 0.

581244SC.ham

SS.
1/13/15

C



AN ACT REVISING CERTAIN LAWS WITHIN THE WORKERS' COMPENSATION ACT THAT ARE ADMINISTERED BY THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING A CHANGE IN THE WORKERS' COMPENSATION REGULATORY ASSESSMENT; PROVIDING THE DEPARTMENT OF LABOR AND INDUSTRY WITH RULEMAKING AUTHORITY FOR DATA COLLECTION FOR THE WORKERS' COMPENSATION DATABASE SYSTEM; PROVIDING FOR ELECTRONIC SUBMITTAL OF REPORTS BY INSURERS; ESTABLISHING THE UNINSURED EMPLOYERS' FUND AS A STATE SPECIAL REVENUE ACCOUNT; ESTABLISHING THAT A PURPOSE OF THE UNINSURED EMPLOYERS' FUND IS PAYMENT OF ADMINISTRATIVE EXPENSES; PROVIDING FOR CONFIDENTIALITY OF UNINSURED EMPLOYERS' FUND RECORDS IN THE WORKERS' COMPENSATION ACT; CLARIFYING THE QUALIFICATIONS FOR AN EXAMINATION PANEL MEMBER; PROVIDING FOR PAYMENT OF BENEFITS IN A DISPUTED CLAIM PRIOR TO MEDIATION; SPECIFYING TERMINATION OF BENEFITS AFTER MEDIATION; AUTHORIZING REIMBURSEMENT FOR BENEFITS PAID AFTER A HEARING BEFORE THE WORKERS' COMPENSATION COURT; INCREASING THE AMOUNT PAYABLE FOR BURIAL EXPENSES FROM \$1,400 TO \$4,000; AUTHORIZING THE CERTIFICATION OF A DISABILITY ON THE DATE THE APPLICATION IS APPROVED; CHANGING THE PERIOD USED FOR ASSESSMENTS FOR THE INDUSTRIAL ACCIDENT REHABILITATION ACCOUNT FROM FISCAL YEAR TO CALENDAR YEAR; AUTHORIZING THE DETERMINATION OF ADVISABILITY OF CONTINUED EMPLOYMENT FOR OCCUPATIONAL DISEASE CLAIMANTS BY PERSONS OTHER THAN THE MEDICAL PANEL; REQUIRING THAT THE COSTS OF EXAMINATIONS AND REPORTS BE BORNE BY THE REQUESTING PARTY; PROVIDING THAT AN INSURER MAY REDUCE OR SUSPEND COMPENSATION FOR A CLAIMANT ENGAGING IN AN UNSANITARY OR INJURIOUS PRACTICE THAT IMPERILS RECOVERY AND REQUIRING MEDIATION OF DISPUTES WHEN BENEFITS ARE TERMINATED DUE TO UNSANITARY OR INJURIOUS PRACTICES; ELIMINATING REDUNDANT LANGUAGE BY COMBINING STATUTES RELATING TO THE CREATION AND ADMINISTRATION OF THE UNINSURED EMPLOYERS' FUND; REQUIRING THAT PLAN NO. 2 INSURERS AND PLAN NO. 3, THE STATE FUND, IDENTIFY THE COSTS OF THE REGULATORY ASSESSMENT THAT IS COLLECTED FROM INSURERS AS A POLICYHOLDER SURCHARGE BASED ON PREMIUM; AMENDING THE SUBSEQUENT INJURY FUND

ASSESSMENT TO PROVIDE THE STATE FUND WITH THE ABILITY TO IDENTIFY THE COST OF THE ASSESSMENT AS A POLICYHOLDER SURCHARGE BASED ON PREMIUM; AMENDING SECTIONS 39-9-401, 39-71-123, 39-71-201, 39-71-225, 39-71-432, 39-71-501, 39-71-503, 39-71-510, 39-71-517, 39-71-519, 39-71-605, 39-71-610, 39-71-725, 39-71-905, 39-71-915, 39-71-1004, 39-72-405, 39-72-608, AND 39-72-714, MCA; REPEALING SECTION 39-71-502, MCA; AND PROVIDING EFFECTIVE DATES, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-9-401, MCA, is amended to read:

"39-9-401. Violation -- infraction -- penalty -- disposition. (1) It is a violation of this chapter and an infraction for any construction contractor to:

(a) perform work as a construction contractor without being registered as required by this chapter;

(b) perform work as a construction contractor when the construction contractor's registration is suspended; or

(c) transfer a valid registration to an unregistered construction contractor or allow an unregistered construction contractor to work under a registration issued to another construction contractor.

(2) (a) A determination by the department of a violation of this section subjects the person who commits the violation to a penalty of up to \$500, as determined by the department. A person who has been determined to have violated this section may request that a hearing be held in accordance with the Montana Administrative Procedure Act. The hearing may be held by telephone or video conference. An appeal of the hearing decision must be made in the same manner as prescribed in 39-51-2403 and 39-51-2404.

(b) A penalty under this section does not apply to a violation that is determined to be an inadvertent error.

(c) A penalty collected under this section must be deposited in the uninsured employers' fund established in ~~39-71-502~~ 39-71-503."

Section 2. Section 39-71-123, MCA, is amended to read:

"39-71-123. Wages defined. (1) "Wages" means all remuneration paid for services performed by an employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) backpay or any similar pay made for or in regards to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan;

(c) tips or other gratuities received by the employee, to the extent that tips or gratuities are documented by the employee to the employer for tax purposes;

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;

(e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(f) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) The term "wages" does not include any of the following:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) the amount of the payment made by the employer for employees, if the payment was made for:

(i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(ii) sickness or accident disability under a workers' compensation policy;

(iii) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(iv) death, including life insurance for the employee or the employee's immediate family;

(c) vacation or sick leave benefits accrued but not paid; or

(d) special rewards for individual invention or discovery.

(3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the term of employment for the same employer is less than four pay periods, the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work.

(b) For good cause shown, if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this subsection, "concurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except ~~self-employment as a sole proprietor or partner~~ for the wages earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be covered, from which the employee is disabled by the injury incurred."

Section 3. Section 39-71-201, MCA, is amended to read:

"39-71-201. (Temporary) Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts the department ~~must administer~~ is required to administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the

uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administrative fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, an assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than \$500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to assessment. The assessments must be sufficient to fund the ~~direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable portion of the indirect costs of regulating plan No. 3~~ costs of the department's administration of the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts administered by the department. The assessment must be equitably apportioned between the three plans using proper accounting and cost allocation procedures. Other sources of revenue, including unexpended funds from the preceding fiscal year, must be used to reduce the costs before levying the assessments.

(2) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(3) Disbursements from the administration money must be made after being approved by the department upon a claim. (Terminates June 30, 1999--sec. 8, Ch. 385, L. 1997.)

39-71-201. (Effective July 1, 1999) Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and

Occupational Disease Acts and the statutory occupational safety acts the department must administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administrative fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be 2.6% of the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational Disease Act without regard to the application of any deductible whether the employer or the insurer pays the losses:

(i) total compensation benefits paid; and

(ii) except for medical benefits in excess of \$200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 31 in the form and containing the information required by the department a report of paid losses pursuant to subsection (1)(b).

(3) An assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than \$500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to an initial assessment equal to the minimum assessment against plan No. 1 employers and plan No. 2 insurers.

(4) Payment of the assessment required by this section must be submitted by the employer under plan No. 1, plan No. 2, or plan No. 3 in:

(a) one installment made on or before July 1; or

(b) two equal installments made on or before July 1 and December 31 of each year. If an employer or insurer fails to pay the assessment required under this section, the department may impose a fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%.

(5) The administration fund must be debited with expenses incurred by the department in the

general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(6) Disbursements from the administration money must be made after being approved by the department upon claim for disbursement."

Section 4. Section 39-71-201, MCA, is amended to read:

"39-71-201. (Temporary) Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts the department must administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administrative fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, an assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than \$500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to assessment. The assessments must be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable portion of the indirect costs of regulating plan No. 3. Other sources of revenue, including unexpended funds from the preceding fiscal year, must be used to reduce the costs before levying the assessments.

(2) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(3) Disbursements from the administration money must be made after being approved by the department upon a claim. (Terminates June 30, 1999--sec. 8, Ch. 385, L. 1997.)

39-71-201. (Effective July 1, 1999) Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts the department ~~must administer~~ is required to administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administrative fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be ~~2.6%~~ 3% of the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational Disease Act without regard to the application of any deductible whether the employer or the insurer pays the losses:

(i) total compensation benefits paid; and

(ii) except for medical benefits in excess of \$200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March ~~31~~ 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (1)(b).

(3) An assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than \$500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No.

2 insurer is subject to an initial assessment equal to the minimum assessment against plan No. 1 employers and plan No. 2 insurers.

(4) Payment of the assessment required by this section must be submitted by the employer or insurer under plan No. 1, plan No. 2, or plan No. 3 in:

(a) one installment made on or before July 1; or

(b) two equal installments made on or before July 1 and December 31 of each year. If an employer or insurer fails to pay the assessment required under this section, the department may impose a fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%.

(5) (a) Beginning July 1, 2000, each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from the insurer's policyholders an amount equal to the insurer's assessment through a surcharge based on premium. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers.

(b) The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". Each assessment surcharge must be shown as a percentage of the total workers' compensation policyholder premium.

(c) The portion of the plan No. 2 assessment identified as a premium surcharge for an individual plan No. 2 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 2 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 2 insured employers during the preceding calendar year.

(d) The portion of the plan No. 3 assessment identified as a premium surcharge for an individual plan No. 3 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 3 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 3 insured employers during the preceding fiscal year.

(e) On or before March 31, 2000, and each March 31 thereafter, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and

plan No. 3, the state fund, of the insurer assessment identified as the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(f) The assessment provided for in subsection (1)(b), which will be identified as a premium surcharge, must be collected at the same time and in the same manner that the premium for the coverage is collected. This premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

~~(5)~~(6) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

~~(6)~~(7) Disbursements from the administration money must be made after being approved by the department upon claim for disbursement."

Section 5. Section 39-71-225, MCA, is amended to read:

"39-71-225. Workers' compensation database system. (1) The department shall develop a workers' compensation database system to generate management information about Montana's workers' compensation system. The database system must be used to collect and compile information from insurers, employers, medical providers, claimants, adjusters, rehabilitation providers, and the legal profession.

(2) Data collected must be used to provide:

(a) management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

(i) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;

(ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends;

(iii) information on litigation and attorney involvement for the purpose of identifying trends,

problem areas, and the costs of legal involvement;

(b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to be at risk in any administrative or judicial proceeding, to determine claims liability or for fraud investigation. The department may release information only upon written request by the insurer and may disclose only the claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and name and address of the insurer and claim adjuster on each claim filed. Information obtained by an insurer pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent necessary for determining claim liability or for fraud investigation; and

(c) current and prior claim information to law enforcement agencies for purposes of fraud investigation or prosecution.

(3) The department is authorized to collect from insurers, employers, medical providers, the legal profession, and others the information necessary to generate the workers' compensation database system.

(4) The workers' compensation database system must be designed in accordance with the following principles:

- (a) avoidance of duplication and inconsistency;
- (b) reasonable availability of data elements;
- (c) value of information collected to be commensurate with the cost of retrieving the collected information;
- (d) uniformity to permit efficiency of collection and to allow interstate comparisons;
- (e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality of collected data;
- (f) reasonable availability of the data at a fair cost to the user;
- (g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;
- (h) compatibility with electronic data reporting;
- (i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections (4)(a) through (4)(h);
- (j) implementation of reporting requirements that allow reasonable lead time for compliance.

(5) The department shall publish an annual report on the information compiled.

(6) Users of information obtained from the workers' compensation database under this section are liable for damages arising from misuse or unlawful dissemination of database information.

(7) Beginning July 1, 2000, an insurer or a third-party administrator who submitted 50 or more "first reports of injury" to the department in the preceding calendar year shall electronically submit the reports and any other reports related to the reported claims in a nationally recognized format specified by department rule.

(8) The department may adopt rules to implement this section."

Section 6. Section 39-71-432, MCA, is amended to read:

"39-71-432. Definitions. As used in 39-71-433, the following definitions apply:

(1) "Business entity" means a business enterprise owned by a single person, corporation, organization, business trust, trust, partnership, limited liability company, limited liability partnership, joint venture, association, or other business entity.

(2) "Group" means two or more business entities that join together, ~~with the approval of the department,~~ to purchase individual workers' compensation insurance policies covering each business entity that is part of a group."

Section 7. Section 39-71-501, MCA, is amended to read:

"39-71-501. Definition of uninsured employer. For the purposes of 39-71-501 ~~through, 39-71-503 through~~ 39-71-511, and 39-71-515 through 39-71-520, "uninsured employer" means an employer who has not properly complied with the provisions of 39-71-401."

Section 8. Section 39-71-503, MCA, is amended to read:

"39-71-503. ~~Administration~~ Uninsured employers' fund -- purpose and administration of fund -- appropriation. (1) ~~The department shall administer the fund and shall pay from it all expenses of administering the fund, all loss adjustment expenses for claims of injured employees of uninsured employers, and all proper benefits to injured employees of underinsured and uninsured employers~~ There is created an uninsured employers' fund in the state special revenue account to pay:

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in subsection (3);

(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015; and

(c) the expenses incurred by the department in administering the uninsured employers' fund.

(2) The department may refer to the workers' compensation fraud office, established in 2-15-2015, cases involving:

(a) false or fraudulent claims for benefits; and

(b) criminal violations of 45-7-501.

~~(2)~~(3) Surpluses and reserves may not be kept for the fund. The department shall make payments that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes precedence over the payment of medical benefits. Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

~~(3)~~(4) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund."

Section 9. Section 39-71-510, MCA, is amended to read:

"39-71-510. Limitation on benefit entitlement under fund. Notwithstanding the provisions of 39-71-407, ~~39-71-502~~, and 39-71-503, injured employees or an employee's beneficiaries who pursue a claim for benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund must be paid in accordance with the sums in the fund. If the department determines at any time that the sums in the fund are not adequate to fully pay all claims, the department may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future."

Section 10. Section 39-71-517, MCA, is amended to read:

"39-71-517. Requirement to serve papers. In pursuing remedies under 39-71-501 through, 39-71-503 through 39-71-511, and 39-71-515 through 39-71-520, an injured employee or the employee's beneficiaries shall serve all pleadings and all other litigation papers on the department and the uninsured employer, regardless of whether the department or the uninsured employer is a party to the particular action to which the papers relate."

Section 11. Section 39-71-519, MCA, is amended to read:

"39-71-519. Settlement. The department, the uninsured employer, the injured employee or the employee's beneficiaries, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413 may enter into a settlement agreement to finally settle the rights and liabilities under 39-71-501 through, 39-71-503 through 39-71-511, and 39-71-515 through 39-71-520 of any or all of the parties. The settlement is subject to department approval in accordance with 39-71-741."

Section 12. Section 39-71-605, MCA, is amended to read:

"39-71-605. Examination of employee by physician -- effect of refusal to submit to examination -- report and testimony of physician -- cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician, psychologist, or panel that must be provided and paid for by the insurer and shall likewise submit to examination from time to time by any physician, psychologist, or panel selected by the department or as ordered by the workers' compensation judge.

(b) The request or order for an examination must fix a time and place for the examination, with regard for the employee's convenience, physical condition, and ability to attend at the time and place that is as close to the employee's residence as is practical. An examination that is conducted by a physician, psychologist, or panel licensed in another state is not precluded under this section. The employee is entitled to have a physician present at any examination. If the employee, after written request, fails or refuses to submit to the examination or in any way obstructs the examination, the employee's right to compensation must be suspended and is subject to the provisions of 39-71-607. Any physician,

psychologist, or panel employed by the insurer or the department who makes or is present at any examination may be required to testify as to the results of the examination.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department or the workers' compensation judge, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers desirable by a physician, psychologist, or panel within the state or elsewhere that has had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician, psychologist, or panel making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician, psychologist, or panel for the examination.

(3) As used in this section, a panel includes a practitioner having substantial experience in the field of medicine concerned with the matters presented by the dispute and whose licensure would qualify the practitioner to act as a treating physician, as defined in 39-71-116, and may include a psychologist.

(4) A claimant is required, upon a written request of an insurer, to submit to a functional capacities evaluation conducted by a licensed physical therapist.

(5) This section does not apply to impairment evaluations provided for in 39-71-711."

Section 13. Section 39-71-610, MCA, is amended to read:

"39-71-610. Termination of benefits by insurer -- department order to pay disputed benefits prior to hearing or mediation -- limitation on order -- right of reimbursement. If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the department may, upon written request, order an insurer to pay additional biweekly compensation benefits prior to a hearing or mediation, but in no event may the biweekly compensation benefits be ordered to be paid under this section for a period exceeding 49 days or for any period subsequent to the date of a the hearing or mediation. If after a hearing before the workers' compensation court it is held that the insurer was not liable for the compensation payments ordered by the department, the insurer has the right to be reimbursed for ~~such~~ the payments by the claimant."

Section 14. Section 39-71-725, MCA, is amended to read:

"39-71-725. Payment of burial expense. There ~~shall~~ must be paid, in case of the death of an employee, ~~which~~ whose death is the result of an accidental injury arising out of the employment and happening in the course of the employment, the reasonable burial expenses of the employee, not exceeding ~~\$1,400, and such~~ \$4,000. The payment is not a part of the compensation ~~which that~~ might be paid but is a benefit in addition to and separate ~~and apart~~ from compensation."

Section 15. Section 39-71-905, MCA, is amended to read:

"39-71-905. Certification as person with a disability. A person who wishes to be certified as a person with a disability for purposes of this part shall apply to the department on forms furnished by the department. The department shall conduct an investigation and shall issue a certificate to a person who, in the department's discretion, meets the requirements for certification. A person shall apply for certification before employment or within 60 days after the person becomes employed or reemployed and before an injury occurs that is covered by this part. The certification is effective on the date of employment or reemployment. Certification is effective on the date the application is approved for a person who applies for certification more than 60 days after employment or reemployment, but before an injury occurs. ~~Failure to apply before employment or within 60 days after employment or reemployment precludes the employer from the protection and benefits of this part."~~

Section 16. Section 39-71-915, MCA, is amended to read:

"39-71-915. Assessment of insurers -- definition. (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Montana Workers' Compensation Act without regard to the application of any deductible regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of \$200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each plan No. 2 insured

~~employer insurer~~, and plan No. 3, the state fund. The assessment amount is the total amount of paid losses reimbursed from the fund in the preceding calendar year and the expenses of administration less other income. The total assessment amount collected must be allocated among plan No. 1 employers, plan No. 2 ~~insured employers~~ insurers, and plan No. 3, the state fund, based on paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before March 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed against the employer, plan No. 2 insurer, or the state fund for that calendar year. On or before March 31 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after ~~January 1~~ July 1 in that calendar year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the plan No. 2 assessment subject to premium surcharge for an individual plan No. 2 insured employer is a proportionate amount of total plan No. 2 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 2 insured employer bore to the total paid losses of all plan No. 2 insurers during the preceding calendar year.

(6) The portion of the state fund assessment subject to premium surcharge for a state fund insured employer is a proportionate amount of total state fund paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual state fund insured employer bore to the total paid losses of state fund insured employers during the preceding calendar year.

~~(6)(7)~~ Payment of assessments due must be made to the department semiannually on June 30 and December 31 of the year following the calendar year on which the assessment is based.

~~(7)(8)~~ Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, may shall collect from each of its policyholders ~~an amount equal to the insured employer's fund~~ the assessment through a surcharge based on premium in subsection (2). When collected,

assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation ~~policyholder~~ subsequent injury fund surcharge". Each assessment must be shown as a percentage of the total workers' compensation policyholder premium. ~~The~~ This premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

~~(8)~~(9) All assessments paid to the department must be deposited in the fund."

Section 17. Section 39-71-1004, MCA, is amended to read:

"39-71-1004. Industrial accident rehabilitation account. (1) The payments provided in 39-71-1003 must be made from the industrial accident rehabilitation account in the state special revenue fund. Payments to the account must be made each year upon an assessment by the department as follows:

(a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to the employer's injured employees in Montana for the preceding ~~fiscal~~ calendar year;

(b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to injured employees of its insured in Montana during the preceding ~~fiscal~~ calendar year;

(c) by the state fund, an amount to be assessed by the department, not exceeding 1% of the compensation paid by the state fund to injured employees in Montana during the preceding ~~fiscal~~ calendar year.

(2) Separate accounts of the amounts that were collected and disbursements that were made from the industrial accident rehabilitation account in the state special revenue fund must be kept for each of the plans. If in any fiscal year the amount that was collected from the employers under any plan

exceeds the amount of payments for employees of the employers under the plan, the assessment against the employers under the plan for the following year must be reduced.

(3) The payments provided for in this section must be made to the department, which shall credit the sums paid to the industrial accident rehabilitation account in the custody of the state treasurer. Disbursements from the account must be made after approval by the department.

(4) The funds allocated or contributed as provided in this section may not be used for payment of administrative expenses of the department.

(5) The methods and processes used to disburse rehabilitation expense payments to eligible disabled workers are procedural and do not affect the substantive rights of those disabled workers."

Section 18. Section 39-72-405, MCA, is amended to read:

"39-72-405. General limitations on payment of compensation. ~~(1) Compensation may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to July 1, 1959.~~

~~—— (2) When an employee in employment on or after January 1, 1959, because the employee has an occupational disease incurred in and caused by the employment that is not yet disabling; and is discharged or transferred from the employment in which the employee is engaged or when the employee ceases employment and it is in fact medically, as determined by the medical panel, inadvisable for the employee on account of a nondisabling occupational disease to continue in employment and the employee suffers wage loss by reason of the discharge, transfer, or cessation, compensation may be paid, not exceeding \$10,000, by an agreement between the insurer and the claimant. If the parties fail to reach an agreement, the mediation procedures in Title 39, chapter 71, part 24, must be followed."~~

Section 19. Section 39-72-608, MCA, is amended to read:

"39-72-608. Payment of medical examination, report, and autopsy expenses. The expense of the first medical examination and report as provided in 39-72-602 must be borne by the insurer. The expense of a reexamination and panel report must be borne by the dissatisfied party requesting the reexamination. The expense of the periodic medical examinations and reports, as provided in 39-72-607, must be borne by the party requesting the periodic medical examination. The expense of the autopsy, as provided for

in 39-72-606, must be borne by the party requesting the autopsy. ~~When the occupational disease causes death, the~~ The expense of any examinations and reports, as provided in 39-72-605, must be borne by the party requesting the examination."

Section 20. Section 39-72-714, MCA, is amended to read:

"39-72-714. Reduction or suspension of compensation for unsanitary or injurious practices or refusal to submit to medical or surgical treatment. The department insurer may reduce or suspend the compensation of ~~an employee~~ a claimant who persists in unsanitary or injurious practices tending to imperil or retard ~~his~~ recovery or who refuses to submit to ~~such~~ medical or surgical treatment as is reasonably essential to promote ~~his~~ the claimant's recovery. If a dispute arises between a claimant and an insurer regarding the reduction or suspension of compensation, the mediation procedures provided in Title 39, chapter 71, part 24, must be followed."

Section 21. Confidentiality of records -- exception for use by public employees. Information obtained from any individual under this part is confidential and may not be disclosed, sold, or opened to public inspection except to department employees when necessary to allow them to perform their public duties under Title 39, chapters 71 and 72, or to provide relevant and necessary information to other public entities or pursuant to a subpoena issued upon a showing of compelling state interest.

Section 22. Repealer. Section 39-71-502, MCA, is repealed.

Section 23. Codification instruction. [Section 21] is intended to be codified as an integral part of Title 39, chapter 71, part 5, and the provisions of Title 39, chapter 71, part 5, apply to [section 21].

Section 24. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from that invalid applications.

Section 25. Effective dates. (1) [Sections 2, 3, 23, 24, 26, and 27 and this section] are effective

on passage and approval.

(2) [Sections 1, 4 through 15, and 17 through 22] are effective July 1, 1999.

(3) [Section 16] is effective July 1, 2000.

Section 26. Retroactive applicability. [Section 3] applies retroactively, within the meaning of 1-2-109, to occurrences after June 30, 1991.

Section 27. Termination. [Section 3] terminates June 30, 1999.

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